

A. PURPOSE, SCOPE AND COVERAGE

What is the purpose of the Mortgage Broker Practices Act?

To establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.

What is the purpose of the Mortgage Broker Practices Act rules?

The purpose of these rules is to administer and interpret the Mortgage Broker Practices Act in order to govern the activities of licensed mortgage brokers, loan originators and other persons subject to the act.

What is the difference between the Mortgage Broker Practices Act and the Mortgage Broker rules?

The Mortgage Broker Practices Act consists of laws that have been passed by the state legislature. A rule (or regulation) is an order, directive, or regulation of general applicability adopted by a state agency after a public hearing is held to receive citizen input. Rules are used by agencies to implement laws, or "fill in the gaps" of legislation. A rule is generally applicable to a group of people, industries, activities, or circumstances, and a violation of a rule may subject a person or business to a penalty or administrative sanction.

What is the scope and coverage of the Mortgage Broker Practices Act and these rules?

Scope and Coverage. There are four criteria to determine the scope and coverage of the Mortgage Broker Practices Act and these rules. All of the criteria must be met in order for a person or entity to fall under the scope and coverage of the act and these rules. The criteria consider: (1) the persons or entities conducting business; (2) the type of transactions performed when conducting the business; (3) the identification of residential real estate; and (4) ~~the location of residential real estate~~ the location of the mortgage broker, the potential borrower, and the residential real estate.

(1) What persons or entities are covered? The Mortgage Broker Practices Act and these rules apply to all persons or entities defined as mortgage brokers under RCW 19.146.010(12), or loan originators under RCW 19.146.010(10). However, certain mortgage brokers and loan originators may be exempt from all or part of the act under RCW 19.146.020 as discussed in Section D, Exemptions, of these rules.

(2) What types of transactions are covered? The Mortgage Broker Practices Act and these rules cover the making or assisting in obtaining of any "residential mortgage loan" defined in RCW 19.146.010(15) and WAC 208-660-XXX. The terms "making" and "assisting" are further defined under WAC 208-660-XXX. Violations of RCW 19.146.0201, however, are not limited to residential mortgage loan transactions.

(3) What is residential real estate? Residential real estate is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units. See examples in Section B Definitions.

(4) Does the location of the mortgage broker, the potential borrower, and the residential real estate affect whether the transaction is covered under the Mortgage Broker Practices Act?

If the mortgage broker, loan originator, potential borrower, or residential real estate is located in Washington, the transaction is covered by the Mortgage Broker Practices Act and these rules.

~~—— (b) If the residential real estate is located in Washington, the transaction is covered by the Mortgage Broker Practices Act and these rules.~~

What are some examples of transactions falling under the scope and coverage of the Mortgage Broker Practices Act and these rules?

(1) A loan originator employed with Mortgage Broker, Inc. with a physical office in Redmond, Washington takes a loan application from a Kirkland, Washington resident for the purchase of a home located in Bellevue, Washington. Mortgage Broker, Inc. is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020(1)(a)(i). The home located in Bellevue meets the definition of residential real estate and the purchaser intends to reside in the home.

(2) A loan originator with a physical office in Spokane, Washington takes a loan application from a Yakima, Washington resident for the purchase of a home located in Oregon. The mortgage broker is not a wholly owned subsidiary of a financial institution and is therefore subject, at least in part, to the act. The home located in Oregon meets the definition of residential real estate and the purchaser intends to reside in the home.

(3) A loan originator with a physical office in Reno, Nevada working for a Nevada mortgage broker takes a loan application from a Nevada resident for the purchase of a home located in Olympia, Washington. The mortgage broker is not a wholly owned subsidiary of a financial institution and is therefore subject, at least in part, to the act. The home located in Washington meets the definition of residential real estate and the purchaser intends to reside in the home.

B. DEFINITIONS

What definitions are applicable to these rules?

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

(2) "Advertising material" means any form of sales or promotional materials to be used in connection with the mortgage broker business.

(3) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(4) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500 as of the effective date of these rules, which is the submission, whether written or computer-generated, of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

(5) An "Application fee" means immediately available funds paid to the department for each mortgage broker, loan originator, or mortgage broker branch office license application.

(6) "Approved licensing or continuing education course" means a licensing or continuing education course approved by the director.

(7) "Bait and switch" means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination may exhibit a bait and switch practice:

(a) A deceptive change of loan program from fixed to variable rate.

(b) A deceptive increase in interest rate.

(c) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(d) A deceptive increase in fees or other costs.

(e) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, but leading the borrower to believe that such amounts are included.

(f) Additional undisclosed terms such as prepayment penalties or balloon payments.

(g) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(h) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(i) Advertising or offering rates, programs or terms that are not available at the time.

(8) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(9) "Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

(10) "Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage

broker business at the location indicated in the license.

(11) "Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

(12) "Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

(13) "Compensation or Gain." For purposes of defining the terms "mortgage broker," or "loan originator," or determining whether the exemptions under RCW 19.146.020(1)(a) (insurance agents), (c) (attorneys), or (g) (real estate agents) apply, what is included in the meaning of "compensation or gain"?

"Compensation or gain" means monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part of the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated on a loan by loan basis. For example, if a person acting as a mortgage broker makes residential mortgage loans for the customers of a builder for no fee, but receives free rent in a building owned by the builder, regardless of how many loans were originated that month, that person would be deemed by the department to have received "compensation or gain" and must be licensed or exempt in order to act as a mortgage broker.

(14) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a

mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware, software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

(15) "Computerized loan information system provider" or "CLI provider" is any person who provides a computerized loan information service, either directly or as an owner-operator of a CLI system, or both.

(16) "Consumer Protection Act" means chapter 19.86 RCW.

(17) "Control" including the terms "controls", "is controlled by", or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is

(a) a general partner, officer, director, or employer of another person;

(b) directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or

(c) has similar status or function in the business as a person in (a) or (b).

(18) "Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

(a) has been convicted of the crime in any jurisdiction;

(b) has been convicted of a crime which, if committed within this state would constitute such a crime under the laws of this state;

(c) has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

(d) has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

(19) "Department" means the department of financial institutions.

(20) "Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(21) "Director" means the director of financial institutions.

(22) "Division" means the division of consumer services within the department of financial institutions.

(23) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(24) "Examination" or "Compliance examination" means the examination performed by the division to determine whether the licensee is in compliance with applicable laws and regulations.

(25) Federal statutes and regulations used in the act are:

(a) "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

(b) "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202.

(c) "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

(d) "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

(e) "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

(f) "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

(g) "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

(h) "Gramm-Leach-Bliley Act" means the Gramm-Leach-Bliley Act (GLBA), at 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

(i) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 C.F.R. Part 3500 et seq.

(j) "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 C.F.R. Part 310.

(k) "Truth in Lending" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.

(26) "Financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

(27) "Financial misconduct," for the purposes of the act, means a gross misdemeanor conviction for any of the following:

(a) Any conduct prohibited by the act;

(b) Any conduct prohibited by statutes governing mortgage brokers in other states if such conduct would constitute a violation of the act;

(c) Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow

officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or,

(d) Any conduct commonly known as white collar crime, including, but not limited to, identity theft, mail fraud, wire fraud, money laundering, check fraud, or similar crimes.

(28) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

Generally, a person is not subject to the other's right of control if that person is not instructed about when, where and how to work, if the person is not guaranteed a regular wage, the person is not reimbursed for business expenses, if the person maintains a separate business, if the person is exposed to potential profits and losses, and if normal employee benefits such as insurance, a pension plan and vacation and sick pay are not provided.

(29) "Licensee" or "licensed mortgage broker" means:

(a) A mortgage broker licensed by the director; or

(b) A loan originator licensed by the director; or

(c) Any person subject to licensing under RCW 19.146.200; or

(d) Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

(30) "Loan Originator" means a natural person who

(a) takes a residential mortgage loan application for a mortgage broker, or

(b) offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical

tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

[CF071406: clarify further the duties of clerical staff?]

For purposes of this definition, "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

(31) "Loan originator licensee" means a natural person who is licensed as a loan originator or subject to licensing.

(32) "Loan processor" is a natural person who performs clerical or support duties at the direction of and subject to the supervision of a licensed or exempt mortgage broker. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan.[CF071406: review]

(33) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

(34) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain

(a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or

(b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

For purposes of this definition, a person "makes" a loan if: the loan is closed in their name, they advance, offer to advance, or make a commitment to advance funds to a borrower for a loan.

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 C.F.R. Part 3500, Sec. 3500.2(b).

[CC061506: Chuck and Whittier to follow-up vis-à-vis wholesale lending]

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists, or other promotional items.

(35) "Mortgage Broker Branch Office Licensee" means a location that is licensed as a branch office of a mortgage broker or subject to licensing.

(36) "Mortgage Broker Licensee" means a person that is licensed as a mortgage broker or subject to licensing.

(37) "Mortgage Broker Practices Act" means chapter 19.146 RCW.

(38) "Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

(39) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(40) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

(41) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(42) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on non-owner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

(43) "Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

- (a) Residential real estate includes, but is not limited to:
 - (i) A single family home;
 - (ii) A duplex;
 - (iii) A triplex;
 - (iv) A fourplex;
 - (v) A single condominium in a condominium complex;
 - (vi) A single unit within a cooperative; or

(vii) A manufactured home when the home and real property together will secure the residential mortgage loan.

(b) Residential real estate does not include:

(i) An apartment building or dwelling of five or more units;

(ii) A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or

(iii) Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

(44) "Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

(45) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(46) "Written examination" means a written test approved by the director.

[CC042406: Additional definitions will be added as they are discussed and drafted.]

C. GOOD STANDING

Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, or exempt mortgage broker?

The department may conduct a good standing review when:

(1) Processing an application for a new mortgage broker branch office license.

(2) Processing an application for appointment of a new or different designated broker.

(3) Processing a request for recognition as an exempt mortgage broker under RCW 19.146.020(4).

What does good standing mean?

For the purposes of the act and these rules, good standing means that the applicant, licensee, or other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the act and these rules. In determining good standing the director will consider the following factors, and any other evidence relevant to good standing as defined in this rule:

1. Whether the applicant or licensee have paid all fees due to the director.
2. Whether the licensee has filed their mortgage broker annual report.
3. Whether the licensee has filed and maintained the required surety bond or had its surety bond canceled or revoked for cause.
4. Whether the licensee has maintained a designated broker in compliance with the act and these rules.
5. Whether the applicant, licensee or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.
6. Whether the applicant, licensee, or other person subject to the act has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years.

7. Whether the licensee or other person subject to the act, is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.
8. Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.
9. Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee, or other person subject to the act, has been notified of the complaints and been given the opportunity to respond.
10. Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition which would result in denial of a new application for a license.
11. Whether the licensee, or other person subject to the act, has failed to comply with an order, directive, subpoena, or requirement of the director, or director's designee, or with an assurance of discontinuance entered into with the director, or director's designee.
12. Whether the licensee, or other person subject to the act, has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director, or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

When should an applicant, licensee, or other person subject to the act receive notice from the department of their failure to meet a determination of good standing?

The department will notify the applicant, licensee, or other person subject to the act that they have failed to meet the department's good standing requirement within ten days of the department's receipt of any application or request that requires a determination of good standing. See WAC 208-660-XXX.

What recourse does an applicant, licensee, or other person subject to the act have when the department has determined that

the applicant, licensee, or other person subject to the act is not in good standing?

The applicant, licensee, or other person subject to the act may request a brief adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, to challenge the department's determination.

What department determinations may be challenged through a brief adjudicative proceeding?

See subsections nine through twelve under "What does good standing mean?" above.

What specific sections of the Administrative Procedure Act are adopted by the director to administer brief adjudicative proceedings?

The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings requested by an applicant or licensee, or conducted at the director's discretion.

Who conducts the brief adjudicative proceeding?

Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but shall not have personally participated in the department's determination of good standing, or work in the department's division of consumer services.

When and how will the presiding officer issue a decision?

Within ten days of the final date for submission of materials, or oral argument, if any, the presiding officer must make a written initial order.

D. EXEMPTION FROM LICENSING

If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker?

Yes. If you are a licensed insurance agent and you intend to take a residential mortgage loan application for a mortgage broker, or you offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain; or if you make a residential mortgage loan, or assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain, or if you hold yourself out as being able to perform any of the above services, you will need a separate license as a loan originator or mortgage broker.

Are insurance companies exempt from the Mortgage Broker Practices Act?

Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington State Office of the Insurance Commissioner are exempt from the Mortgage Broker Practices Act.

If I am making residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, am I exempt from the Mortgage Broker Practices Act?

If you are licensed under the Consumer Loan Act, any loans covered by that Act are exempt from the Mortgage Broker Practices Act. Complying with the Consumer Loan Act includes abiding by the requirements and restrictions of that act and counting all loans originated and made under that act for purposes of your annual assessment.

If I am an exempt mortgage broker because my business has been approved and is subject to audit by Fannie Mae or Freddie Mac, am I subject to licensing or any other sections of the act?

You are not required to have a license, but you are subject to RCW 19.146.0201 through RCW 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the

consumer with certain information they have paid for. You are also subject to the investigation and enforcement authority of the director.

If I am an exempt mortgage broker because my business has been approved and is subject to audit by Fannie Mae or Freddie Mac, are my loan originators subject to licensing or any other sections of the act?

Your loan originator employees are not required to have a license, but they are subject to RCW 19.146.0201 through RCW 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. Your loan originator employees are also subject to the investigation and enforcement authority of the director. [CF071006: The licensing sub-panel recommends clarification that only employees of the exempt affiliate are eligible for the exemption from licensing as loan originators; independent contractor loan originators are not]

As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain ~~negotiate~~ a residential mortgage loan in the course of my practice?

(1) If you are a licensed attorney and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020(1)(c).

(2) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department would consider you to be principally engaged in the mortgage broker business and you would need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for professional legal service does not include the receipt of compensation or gain associated with obtaining a residential mortgage loan on the property.

As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?

You are exempt from the act under RCW 19.146.020(1)(g) if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property. [CC042406: Consider adding examples here.]

Under what circumstances will the director approve an exemption under RCW 19.146.020(4) for the loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?

(1) The director will provide a written exemption from licensing for loan originators ~~working for~~ of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank if the director finds that the affiliate is in "good standing" with the department and the affiliate has procedures in place, as evidenced by a written Plan of Business, to reasonably assure the department that:

[CF071006: The licensing sub-panel recommends that these loan originators be called "exclusive agents," pursuant to the statute, to differentiate them from licensed loan originators. The sub-panel also recommends clarification that only employees of the exempt affiliate are eligible for the exemption from licensing as loan originators; independent contractor loan originators are not]

(a) ~~The affiliate is in "good standing" with the department;~~
(b) ~~The loan originators working for~~ of the affiliate of a bank ~~are exclusive agents~~ operate exclusively as loan originators for the affiliate and ~~do not work as loan originators~~ for other mortgage brokers;

~~(e)~~(b) The affiliate of the bank requires continuing education for loan originators that meets the same or similar requirements approved by the director for licensed loan originators;

~~(d)(c) The loan originator working for such the affiliate of the bank has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony within seven years; The affiliate of the bank must have a supervisory plan that includes will notifying the department if the affiliate terminates an approved agent because during the agent's contractual relationship with the affiliate the an approved agent has been is convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony. The affiliate will not be subject to liability as a result of any information provided to the department pursuant to this section.~~

~~(e)(d) The No loan originator working for such of the affiliate of the bank, to the knowledge of the affiliate, has not had a loan originator or similar license revoked or suspended within the last five years.~~

(2) To qualify for this exemption, the affiliate must make a written request to the department and submit a Plan of Business with the request. After receipt of this request the department will notify the ~~exclusive agent affiliate~~ in writing within 90 days whether or not ~~it the affiliate's loan originators~~ qualify for the exemption.[CF071006: The licensing sub-panel recommends removing the notification deadline]

(3) The exemption granted by the director remains valid ~~until revoked~~ (a) as long as the affiliate complies in all material respects with its Plan of Business ~~maintains the same business model for using loan originators and~~ (b) the affiliate remains in good standing with the department.

~~(4) If the affiliate changes its business model, it must notify the department and apply for another exemption if applicable.~~

When is a CLI provider exempt from the licensing requirements of the act?

A CLI provider is exempt from the licensing requirements of the act:

- (1) When the CLI provider meets the general statutory requirements under RCW 19.146.020(1)(a),(c),(d),(e), (g), or (h).

- (2) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate who does not receive either (i) a separate fee for the CLI service, or (ii) a sales commission greater than that which would be otherwise customary in connection with the sales transaction.
- (3) When a person, acting as a CLI provider,
- a. Provides only information regarding rates, terms, and lenders;
 - b. Complies with all requirements of WAC 208-660-FFF;
 - c. Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;
 - d. Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;
 - e. Does not accept any deposit for third-party services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;
 - f. Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and
 - g. Does not provide to the borrower a good faith estimate or other disclosure required of mortgage brokers or lender by state or federal law.
- (4) If the CLI provider is not exempt under subsection (1), (2) or (3) above, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation, directly or indirectly, for performing or facilitating the CLI service.

When is a CLI provider required to have a mortgage broker license?

(1) If a CLI provider, who is not otherwise exempt from the licensing requirements of the Act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker license.

For purposes of this rule, a "loan application" will be considered any electronic gathering from the borrower (or the borrower's agent) of both personal identity and financial information, if:

[CF071406: Should this loan application definition be consistent with the earlier definition of "application"?]

- (a) The information, in combination, is delivered or made available to a mortgage broker or lender for follow-up with the borrower; and
- (b) Either (a) the combined information can be used to evaluate, in whole or in part, the creditworthiness of the borrower, or (b) the combined information is used to initiate or complete, in whole or in part, a Uniform Residential Loan Application (FHLMC 1003), or equivalent, with a mortgage broker or lender.

(2) Example - License required: A CLI provider uses an Internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "Submit," the information collected in the abbreviated application is forwarded to Lender. The information contains the borrower's name, his Social Security number, contact information, purpose of the loan sought (i.e., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by Lender to electronically populate "form fields" and to initiate Lender's Uniform Residential Loan Application. A loan officer for the Lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(3) Example - License not required: A CLI provider uses an Internet-based CLI system in which various interactive informational tools are present, including an online "pre-qualification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any Lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "Submit." A number of lenders receive only the personal identity information of borrower and not any financial

information. However, the CLI system has been programmed (and may be continuously re-programmed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan officers from Lender A and Lender B initiate contact with borrower based solely on borrower's contact information. Lender A and Lender B, through their assigned loan officers, contact borrower with the object of beginning and hopefully completing a Uniform Residential Loan Application. In this example, CLI provider has not "accepted" or "submitted" a "loan application," because borrower's data input has not been used to actually initiate or complete a Uniform Residential Loan Application.

Must the CLI Provider provide any disclosures?

(1) Yes. If the borrower of the CLI services pays for the CLI service, either directly or indirectly, the CLI service provider must give the following disclosure:

- (a) The amount of the fee the CLI service provider charges the borrower for the service;
- (b) That the use of the CLI system is not required to obtain a residential mortgage loan; and
- (c) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(2) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI providers books and records for at least two years.

May a mortgage broker be a CLI system provider?

Yes. Any licensed mortgage broker that provides CLI systems must notify the director in writing of its intent to provide the service. The notification must include:

- (1) Copies of all agreements between the licensee and the CLI service provider, including all business names and addresses where CLI services will be provided;

- (2) Copies of all CLI disclosure statements that the CLI service provider will give to borrowers in connection with the provision of the CLI services.

Are CLI system providers and CLI service providers subject to enforcement under the Act?

Yes. CLI system providers and CLI service providers are responsible for any violations of the Act and will be subject to any applicable fines or penalties.

E. MORTGAGE BROKERS

1. Mortgage Brokers - General

May I make residential mortgage loans in Washington without a license?

No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020 in order to originate residential mortgage loans. There is no "one-time one loan" exception.

May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker?

No. Mortgage broker licenses may only be used by the entity named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, or shared with any other person.

As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?

Yes. You are responsible for any conduct violating the act or these rules by any **one person** you employ, or engage as an independent contractor, to work in the business covered by your license. [CF072506: change by enforcement sub-panel]

Who at the licensed mortgage broker company is responsible for the company's compliance with the act and these rules?

The designated broker, principals, and owners are responsible for the company's compliance with applicable local, state, & federal law.

What responsibility is carried by companies exempt from licensing?

The principals and owners of companies exempt from licensing under the act are responsible for:

- (1) The company's compliance with applicable local, state, and federal laws;
- (2) The mortgage business activities of employees and independent contractors representing the exempt mortgage broker company; and
- (3) Notification to the director of any change affecting the company's exempt status under the act

2. Mortgage Brokers - Licensing

How do I apply for a mortgage broker license?

- (1) **Appoint a Designated Broker.** You must appoint a Designated Broker that meets the requirements of WAC 208-660-XXX.
- (2) **Submit an application.** You must fill out an application in a form prescribed by the director. Submit the application with the appropriate attachments to the department for review.
- (3) **Pay an application fee.** You will have to pay an application fee to cover the department's cost of processing and reviewing applications. You must also pay a separate annual license fee in addition to the application fee. See Section __, Department Fees and Costs.
- (4) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.
- (5) **Provide a surety bond.** Mortgage brokers must have a surety bond of twenty to sixty thousand dollars depending on the average number of loan originators representing the mortgage broker. See WAC 208-660-XXX.

What will happen if my application for a mortgage broker license is incomplete?

The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You can then re-submit the application package.

What information will the department consider when deciding whether to approve my mortgage broker license application? And why does the department want that information?

The department considers the financial responsibility, experience, and general character and fitness of the applicant, owners, officers, principals, and the designated broker.

The department considers this information in order to determine if the mortgage broker business will be operated honestly, fairly, efficiently and within the purposes of applicable state and federal laws.

What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?

[CF072506:Answer pending from licensing sub-panel]

~~(1) Whether the owner(s), officers, principals, or the designated broker have had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application.~~

~~—— (2) Whether the owner(s), officers, principals, or the designated broker have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or any felony within seven years of the filing of the present application.~~

~~—— (3) Whether the owner(s), principals, or the designated broker are in good standing with the department. See Section __, Good Standing.~~

How do I withdraw my application for a mortgage broker license?

Send the department a written request, in a form prescribed by the department, to withdraw your mortgage broker license application.

When will the department consider my mortgage broker license application package abandoned?

If you do not respond to the department within ten business days from the date of the department's second request for information, your application is considered abandoned. You may reapply by submitting a new application per WAC 208-660-XXX.

What are my rights if the director denies my application for a mortgage broker license?

You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund the license fee and any unused portion of the application fee.

What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?

The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for mortgage broker license application denials, cease and desist orders, license suspension or revocation, civil penalties imposition or other remedies issued by the department, and any appeals or reviews of those actions. See WAC 208-660-XXX.

May I advertise my business while I am waiting for my mortgage broker license application to be processed?

No. It is a violation of the act for non-licensed, non-exempt mortgage brokers or loan originators to originate, or solicit for origination, single family residential mortgage loans.

May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?

No. You may not originate loans prior to receiving your mortgage broker license.

How do I change information on my mortgage broker license?

Most changes to a license require notification to the department. See Section __, Reporting Requirements.

When does a mortgage broker license expire?

The mortgage broker license expires one year after the initial issuance date. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

When may the department issue interim mortgage broker licenses?

To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date of less than one year. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

One example of having substantially met the initial licensing requirements is: submitting a complete application, paying all application fees, and the department having received and reviewed the applicant's background check.

How do I renew my mortgage broker license?

- (1) Before the license expiration date you must:
 - (a) File the mortgage broker annual report, and any other required notices, with the director. See Section __, Reporting Requirements.
 - (b) Show evidence that your designated broker completed the required annual continuing education.
 - (c) Verify the surety bond is adequate for the average number of loan originators, including all locations.
 - (d) Pay the annual license assessment fee.
- (2) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

If I let my mortgage broker license expire must I reapply to get a new license?

If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an expired license. However, if you renew your license during this forty-five day grace period, in addition to paying the annual assessment on your license, you must pay an additional fifty

percent of your annual assessment. See WAC 208-660-XXX for the license renewal requirements.

During this forty-five day window, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or a department "date received" stamp within the forty-five days.

May I still conduct my mortgage broker business if my mortgage broker license has expired?

No. If your license has expired:

- (1) No one may originate new loans in the name of your company.
- (2) Loans originated prior to the license expiration must be completed within six months.
- (3) You must notify your loan originators and any branch(es) of the company license expiration and the prohibition against originating new loans for the company.

What actions may the director take relating to mortgage broker licensing?

The director may: (1) Issue, suspend, revoke, or deny applications for mortgage broker licenses and exemption certificates.

(2) Enforce all laws and rules relating to mortgage broker licensees.

(3) Hold hearings on mortgage broker licensing under the Administrative Procedure Act, chapter 34.05 RCW.

(4) Impose fines on, or order restitution from, a mortgage broker subject to the act, for violations of the act or these rules.

See also Section 0, Director and Department Powers.

What should I do if I wish to close my mortgage broker business?

You may surrender the mortgage broker license by notifying the department, in a form prescribed by the director, of your

intention to stop doing mortgage loan business in Washington. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions occurring before you surrender your license. You must send any remaining funds from the trust account to the Unclaimed Property section at the WA Dept of Revenue.

May I transfer, sell, trade, assign, or loan my mortgage broker license to another person or company?

No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license.

3. Mortgage Brokers - Surety bond

What are the surety bond requirements for licensed mortgage brokers?

- (1) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the director.
- (2) The surety bond amount must be between \$20,000 and \$60,000 depending on the annual average number of loan originators representing the mortgage broker.
- (3) When the mortgage broker initially applies for licensure, the dollar amount of the surety bond must be sufficient to cover the number of loan originators listed in the application.
- (4) The surety bond must list the full name and any trade names used by the mortgage broker. The surety bond must list the company's main physical address including street number, street name and direction, suite number, city, county, and state.
- (5) The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power-of-attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.

The following chart shows the surety bond amount required for the annual average number of loan originators:

Average	Minimum
---------	---------

Number of Loan Originators	Required Bond Amount
up to 3.0	\$20,000
more than 3.0, up to 6.0	\$30,000
more than 6.0, up to 9.0	\$40,000
more than 9.0, up to 15.0	\$50,000
more than 15.0	\$60,000

Who provides mortgage broker surety bonds?

To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state Office of the Insurance Commissioner's web site.

What do I do with the surety bond once I receive it from my insurance company?

You must sign the original surety bond. Then include the surety bond and the attached power-of-attorney with your license application package.

What happens to my mortgage broker license if my surety bond is cancelled?

If you are unable to obtain and maintain a surety bond you must surrender your mortgage broker license. Failure to maintain a surety bond is a violation of the act.

May I change surety bond companies?

Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

Why must I carry a surety bond to have a mortgage broker license?

The surety bond protects the state and any persons who suffer loss by reason of the mortgage broker's, or its loan originator's violation of any provision of this act or rules adopted under this chapter.

4. Mortgage Brokers - Main Office

Must a licensed mortgage broker have a designated broker?

Yes. Licensed mortgage broker companies must have a designated broker at all times.

How many designated brokers may a mortgage broker have?

The mortgage broker must have a qualified designated broker at all times. The mortgage broker may appoint only one individual to be the designated broker at any given time. The designated broker need not be a principal of the mortgage broker company.

It is a prudent business practice to have more than one qualified individual working in the company who could be appointed as the designated broker.

If my designated broker leaves, may I continue to operate my mortgage broker business?

Yes. You may continue to operate your mortgage broker business. However, you must notify the department within five days of the loss of, or change of your designated broker. You must then replace the designated broker within thirty days. If you need more than thirty days to replace the designated broker, you must seek approval from the department. Failure to replace your designated broker, or receive approval from the director for an extension, may result in an enforcement action against you.

What must I do to replace my designated broker?

You must apply, in a form prescribed by the director, for approval of the new designated broker. The new designated broker must meet the requirements of WAC 208-660-XXX and the good standing requirements of WAC 208-660-XXX.

What must I do if I sell all or part of my mortgage broker company?

See WAC 208-660-XXX.

After my mortgage broker license is approved, may I change my business structure?

Yes. You must follow the notification requirements of WAC 208-660-XXX.

May a licensed mortgage broker share an office with a licensed real estate broker?

Yes. A licensed mortgage broker may share an office with a licensed real estate broker. The mortgage broker location must be licensed as a main or branch mortgage broker office.

If a licensed mortgage broker shares an office with a licensed real estate broker, what must the mortgage broker do to notify the public that the office is shared?

The mortgage broker must clearly identify the mortgage broker business as separate from the real estate business to the public on any signage, advertising, or other material identifying the businesses.

What are the disclosure requirements when a mortgage broker is associated with or shares an office with a real estate broker?

Mortgage brokers working in or associated with a real estate office have an additional responsibility to mortgage clients to disclose the relationship with the real estate broker.

In addition to the disclosures required by RCW 19.146.030, the following statement must be provided to these mortgage clients:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

May I add a trade name (or "DBA") to my mortgage broker license?

Yes. You may add a trade name, or "DBA" name, to the mortgage broker license if you first apply to the department, in a form

prescribed by the director, and receive department approval. When the department has approved the trade name, you must conduct business under that trade name in at least one of the three following ways:

- (1) Use your license name together with the trade name, or
- (2) Use your mortgage broker license number together with the trade name, or
- (3) Use your legal name together with the trade name and mortgage broker license number.

If I drop the "Inc." or "LLC" from my mortgage broker license name for advertising, am I creating a DBA name that requires approval from the department?

No. The department does not consider dropping the "Inc." or "LLC" from your license name a change that requires approval from the department before use.

May I conduct my mortgage broker business from more than one location?

Yes. You may establish one or more branch offices under your license. See WAC 208-660-XXX through XXX for information on licensing branch offices.

5. Mortgage Brokers - Branch Offices

May I open branch offices under my mortgage broker license?

Yes. A licensed mortgage broker may submit license application(s) to the department to establish branch office(s) under the existing mortgage broker license. The application for mortgage broker branch office license shall be in a form prescribed by the director. Each branch office needs its own license and must pay an annual license fee. See Section __, Department Fees and Costs.

How do I apply for a mortgage broker branch office license?

As the licensed mortgage broker, you must apply to the department for a branch office license before opening a branch office. The application for a mortgage broker branch office license must be in a form prescribed by the director. The licensed mortgage broker must be in good standing, and may need

to increase the surety bond. You will have to pay an application fee and annual assessment fee. See Section __, Department Fees and Costs.

What does the department consider when reviewing an application for a branch office license?

The department considers:

- (1) Whether the mortgage broker is in good standing.
- (2) Whether the mortgage broker's surety bond is sufficient to cover the loan originators working from the branch office.
- (3) Whether the physical address listed in the application can be verified.

Must I display my branch office license?

Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.

How do I change information on my mortgage broker branch license?

You must file a license amendment application with the department. If approved, the department will issue an amended mortgage broker branch license.

Does my branch office license expire?

The license expires one year after the initial issuance date. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year. See WAC 208-660-XXX.

~~When may the department issue interim licenses?~~

~~To prevent an undue delay, the director may issue interim licenses with a fixed expiration date of less than one year. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.~~

~~Examples of having substantially met the initial licensing requirements include, but are not limited to, submitting a complete application, paying all fees, and the department having received and reviewed an applicant's background check.~~

How do I renew my mortgage broker branch office license?

(1) Before the expiration date, the licensed mortgage broker must:

(a) Verify the surety bond is adequate for the company's average number of loan originators.

(b) Pay the branch office annual assessment fee.

(2) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

If my mortgage broker branch office license expires, must I apply for a new license?

If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day grace period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment. See WAC 208-660-XXX for the license renewal requirements.

During this forty-five day window, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a postmark or "date received" stamp within the forty-five days.

If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?

No. Once the mortgage broker branch office license has expired:

- (1) No one may originate new loans from this location.
- (2) Existing loans must be completed, at the main office or other licensed branch, within six months.
- (3) You must notify your loan originators of the license expiration.

May I add a trade name (or "DBA") to my mortgage broker branch office license?

Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

- (1) Use your license name together with the branch office trade name, or
- (2) Use the branch office trade name and mortgage broker branch office license number together.

How must I identify my mortgage broker branch office(s)?

The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

Does my branch office have to be a physical location?

Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See Section __, Out-of-State Mortgage Brokers and Loan Originators.

Must I have a branch manager?

No. Although you may appoint one, the act does not require a branch manager. The company's designated broker is responsible for compliance at all locations.

Must I have a designated broker at each branch?

No. The licensed mortgage broker company must have only one designated broker who is responsible for company activity.

F. DESIGNATED BROKERS

1. Designated Brokers - General

How do I become a designated broker?

- (1) You must pass the designated broker test.

(2) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department.

(3) You must have a minimum of two years' experience originating or processing residential mortgage loans.

(a) The work experience must be:

- (i) as a mortgage broker, designated broker, or branch office manager of a mortgage broker business, or
- (ii) as a mortgage banker, responsible individual, or branch manager of a mortgage banking business, or
- (iii) as a loan originator with responsibility primarily for loans secured by a lien on real estate, or
- (iv) as a branch manager of a lender with responsibility primarily for loans secured by a lien on real estate, or
- (v) as a manager or supervisor of mortgage loan originators, or
- (vi) as a mortgage processor, underwriter, or quality control professional, or
- (vii) as a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and
- (viii) the work experience is not more than five years old.

(b) The work experience must be evidenced by a detailed work history and:

- (i) W-2 federal income tax reporting forms in the designated broker appointee's name; or
- (ii) 1099 federal income tax reporting forms in the designated broker appointee's name; or

(iii) Corporate tax returns signed by the designated broker appointee for a licensed or exempt residential mortgage company; or

(iv) A letter(s) from a lender(s) on the lender letterhead evidencing that the designated broker appointee has submitted loans to the lender(s) for two or more years when the appointee was not employed in any capacity by the lender(s).

(4) In addition to supplying the application information, you, ~~and the licensed mortgage broker,~~ must be in good standing with the department. [CF070506: good standing applies to the "new or different" designated broker. Is the DB in a first-time license application a "new" designated broker?]

May I work as the designated broker for more than one company?

Yes. You may be the designated broker for more than one company.

Must the designated broker also hold a loan originator's license?

A designated broker approved by the department will be given a loan originator license if they do not already have one. If the designated broker already has a loan originator license, that license will be added to the licensed mortgage broker's list of loan originators.

May I work as the designated broker for one company and a licensed loan originator for another company?

Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must apply to the department for an additional loan originator license.

As a designated broker, am I liable for the conduct of others in the mortgage broker company?

Yes. See WAC 208-660-XXX and 208-660-XXX.

As a designated broker, what reporting requirements must I comply with?

See Section H, Reporting Requirements.

2. Designated Brokers - Testing

Where may I get information about the designated broker test?

The department will publish the names and contact information of approved testing providers on the department web site.

What topics may be covered in the designated broker test?

See Appendix __, WAC 208-660-XXX.

After passing the designated broker test, will I have to take it again?

You must re-take the designated broker test if you have not been employed in the residential mortgage loan industry for the past five years.

How soon after failing the designated broker test may I take it again?

After failing the test three consecutive times you must wait at least fourteen calendar days before taking the test again.

3. Designated Brokers - Continuing Education

Where may I get information about continuing education?

The department will publish a list of course providers and professional organizations offering approved courses of education. The course providers and professional organizations will have detailed information about the continuing education courses they offer.

As a designated broker, how many clock hours of continuing education must I have?

The continuing education requirement for designated brokers will be in the form of approved courses. The individual clock hours may vary. You must complete three courses annually. Alternatively, you may attend three mortgage broker commission meetings instead of completing one continuing education course.

As a designated broker, may I take the same approved course multiple times to meet my annual continuing education requirement?

No. You may not take the same course in the same or successive years to meet the annual requirements for continuing education. For example, if you take classes A, B, and C in year one and receive credit for those courses, you cannot take classes A, B, and C in year two and again receive credit. You must take courses D, E, and F in year two.

If I teach an approved continuing education course may I use my course as credit toward my annual continuing education requirement?

Yes. As an instructor of an approved continuing education course, you may receive credit for one of the three annually required designated broker continuing education courses. You will only receive one course credit each year no matter how many different approved continuing education courses you teach.

Is ethics a required continuing education course for designated brokers?

Yes. You must take an ethics continuing education course in your first year of acting as a designated broker.

As a designated broker, if I take a continuing education course approved for multiple jurisdictions, will the department accept it as part of my continuing education requirement?

If any state has continuing education requirements or standards at least as stringent as Washington's, their continuing education courses may be approved by the department as meeting the continuing education requirements under the act and these rules.

If I accumulate more than the required designated broker continuing education course credits during a year, may I carry-over the excess credit to the next year?

No. Continuing education courses only apply to the year in which they are taken.

How do I provide the department with proof of the continuing education courses I have completed?

You must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department. The certificate of satisfactory completion must

include, at a minimum, your name, the course provider's name, the course title, and the date of course completion.

G. LOAN ORIGINATORS

1. Loan Originators - General

If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?

No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?

No. Only the borrower may submit a written request for the release of information to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. Loan files belong to the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents. The licensed mortgage broker must transmit the information within five days after receiving the borrower's written request.

May I act as a loan originator and a real estate agent in the same transaction?

Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction. When this occurs, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

As a loan originator, may I be paid directly by the borrower for my services?

No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

~~May a loan originator have clerical or administrative personnel?~~

~~Yes. A loan originator for a licensed or exempt mortgage broker may have employees or independent contractors as long as the employee or independent contractor provides only clerical or administrative functions for the loan originator.~~

[CF071906: we struck identical language from the DB section on 071306]

May I work as a licensed loan originator for a mortgage broker located out of the state?

Yes. You may originate loans for any mortgage broker you are affiliated with who is licensed under Washington law.

Do loan processors have to be licensed as loan originators?

No. Loan processors are not required to have a loan originator license provided they work under the supervision of a licensed or exempt mortgage broker or loan originator and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator.

2. Loan Originators - Licensing

How do I apply for a loan originator license?

(1) **Pass a licensing test.** You must take and pass a test that assesses your knowledge of the mortgage business and related regulations. See Section __, Loan Originators - Testing.

(2) **Submit an application.** The application form will be prescribed by the director.

(3) **Prove your identity.** You must provide information to prove your identity.

(4) **Pay the application and license fees.** You must pay an application fee to cover the department's cost of processing and reviewing applications. You must also pay a separate annual assessment fee. See Section __, Department Fees and Costs.

In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?

(1) **General Fitness and Prior Compliance Actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, and a review of any investigation or enforcement activity taken against you, in this state, or any jurisdiction.

(2) **License Suspensions or Revocations.** You may not be eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked within five years of the filing of the present application.

(3) **Criminal History.** You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within seven years of the filing of the present application.[CF070506: Statutory language]

May I originate residential mortgage loans in Washington without a loan originator license?

No. Loan originators must have a valid Washington license or be an employee of a company exempt from licensing in order to originate residential mortgage loans. There is no "one-time one loan" exception.

What will happen if my loan originator license application is incomplete?

The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You can then re-submit the application package.

How do I withdraw my application for a loan originator license?

Provide the department with a request to withdraw your application in a form prescribed by the director.

When will the department consider my loan originator license application to be abandoned?

If you do not respond within ten business days to the department's second request for information, your loan originator license application is considered abandoned. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package.

What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?

The department will notify you if your application is denied. You will receive a refund of the license assessment and any unused portion of the application fee.

If your license application lists any mortgage brokers, the department will also notify the mortgage brokers of the license denial.

Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request an administrative hearing on the denial. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied.

How will the department provide me with my loan originator license?

The department may use any of the following methods to provide you with your loan originator license:

- (1) A printed paper license sent to you by regular mail.

(2) A license sent to you electronically that you may print.

(3) A license verification available on the department's web site and accessible for viewing by the public.

May I transfer, sell, loan, assign, or give my loan originator license to someone else?

No. A loan originator's license, or the authority granted under such a license, is not assignable and may not be transferred, sold, or franchised.

How do I change information on my loan originator license?

You must file a license amendment application with the department, in a form prescribed by the department. You must file the application thirty days before the effective date of the change. Depending on the change, you may be charged a fee. See Section __, Department Fees and Costs.

What is an inactive loan originator's license?

If a person holds a loan originator license but is not working with a licensed mortgage broker, they hold an inactive license. A person holding an inactive license may not hold themselves out as a licensed loan originator.

When my loan originator's license is inactive, am I subject to the director's enforcement authority?

Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?

Yes. You must comply with all the annual licensing requirements or you will be unable to renew your loan originator license.

How does my loan originator's license become active?

When the department receives an application from a mortgage broker establishing a working relationship with you, your loan

originator license will become active. The department will notify you and all mortgage brokers you are working with of the new working relationship established by the licensed mortgage broker.

When does my loan originator license expire?

The loan originator license expires one year after the initial issuance date. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year. See WAC 208-660-XXX.

When may the department issue interim loan originator licenses?

To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date of less than one year. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

One example of having substantially met the initial licensing requirements is: submitting a complete application, paying all application fees, and the department having received and reviewed the applicant's background check.

How do I renew my loan originator license?

(1) Before the license expiration date you must:

- (a) Pay the annual assessment fee, and
- (b) meet the continuing education requirement.

(2) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

If I let my loan originator's license expire must I apply to get a new license?

If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day grace period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See WAC 208-660-XXX for the license renewal requirements.

During this forty-five day window, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp within the forty-five days.

May I still originate loans if my loan originator license has expired?

No. Once your license has expired you may not originate new loans.

What happens to the loan applications I originated before my loan originator license expired?

Existing loan applications must be processed by the licensed mortgage broker.

May I surrender my loan originator's license?

Yes. You may surrender your license before the license expires by notifying the department, in a form prescribed by the department.

Surrender of your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

What actions may a mortgage broker take that affect my loan originator license?

(1) The licensed mortgage broker may take the following actions affecting your license:

- (a) Advise the department they have begun working with you.
- (b) Advise the department they are terminating their working relationship with you.
- (c) Report to the department that you allegedly violated applicable state or federal law(s) or rules.

(2) The licensed mortgage broker may NOT:

- (a) Surrender your license.
- (b) Amend any information on your license except that in 1(a) or (b).

Must I display my loan originator license where I work as a loan originator?

No. Neither you nor the mortgage broker company are required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

Must I include my loan originator license number on any documents?

You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

When must I disclose my loan originator license number to the borrower?

In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

- (1) When asked by any party to a loan transaction, including third party service providers;
- (2) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;
- (3) When asked by any person who contacts you about a residential mortgage loan;
- (4) When taking a residential mortgage loan application.

If I am employed by a bank or other exempt entity may I apply for and receive a loan originator license?

Yes, you may apply for a license at any time. However, if you are not working for a licensed mortgage broker, your license will be considered inactive.

What actions may the director take relating to loan originator licensing?

The director may: (1) Issue, suspend, revoke, or deny applications for loan originators.

(2) Enforce all laws and rules relating to loan originator licensees.

(3) Hold hearings on loan originator licensing under the Administrative Procedure Act, chapter 34.05 RCW.

(4) Impose fines on, or order restitution from, a loan originator subject to the act, for violations of the act or these rules.

See also Section 0, Director and Department Powers.

3. Loan Originators - Testing

Where may I find information about the loan originator test?

The department will publish the names and contact information of approved testing providers on the department web site.

How much does the loan originator test cost?

Testing costs are set by contract between the test provider and the department and may be modified from time to time. The department will publish the current testing fee with the testing provider contact information.

How do I register to take the loan originator test?

The department will publish registration information with the testing provider contact information.

What topics may be covered in the loan originator test?

See Appendix __, WAC 208-660-XXX.

After passing the loan originator test, will I have to take it again?

You must re-take the loan originator test if you have not been employed in the residential mortgage loan industry for the past five years.

How soon after failing the loan originator test may I take it again?

After failing the test three consecutive times, you must wait at least fourteen calendar days before taking the test again.

4. Loan Originators - Continuing Education

Where may I get information about continuing education for loan originators?

The department will publish a list of the approved professional organizations that provide continuing education on the department's web site. The professional organizations will have detailed information about the continuing education courses they offer.

How many clock hours of loan originator continuing education must I have each year?

The continuing education requirement will be in the form of approved courses. The individual clock hours may vary. You must complete two courses annually. Alternatively, you may attend three mortgage broker commission meetings instead of completing one continuing education course.

As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?

No. You may not take the same course in the same or successive years to meet the annual requirements for continuing education. For example, if you take classes A, B, and C in year one and receive credit for those courses, you cannot take classes A, B, and C in year two and again receive credit. You must take courses D, E, and F in year two.

If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?

Yes, as an instructor of an approved continuing education course you may receive credit for one of the two annually required loan originator continuing education courses. You will only receive one course credit each year no matter how many different approved continuing education courses you teach.

Is ethics a required continuing education course for loan originators?

Yes. You must take an ethics continuing education course in your first year of holding a loan originator license.

If I take a loan originator continuing education course approved for multiple jurisdictions, will the department accept it as part of my continuing education requirement?

If any state has continuing education requirements or standards at least as stringent as Washington's, their continuing education courses may be approved by the department as meeting the continuing education requirements under the act and these rules.

If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?

No. Continuing education courses only apply to the year in which they are taken.

If I fail to complete the required continuing education, what happens to my loan originator's license?

See WAC 208-660-XXX to renew your license within forty-five days of it expiring.

How will I know which courses and providers satisfy the continuing education requirement?

The department will approve continuing education courses offered by course providers and will approve professional organizations offering courses. The providers, their courses and contact information will be listed on the department's web site.

How do I provide the department with proof of the continuing education courses I have completed?

You must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department. The certificate of satisfactory completion must include, at minimum, your name, the course provider's name, the course title, and the date of course completion.

H. REPORTING REQUIREMENTS

As a licensed mortgage broker, what annual report must I provide to the department?

You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:

(a) The total number of closed Washington residential mortgage loans **secured by Washington real estate**, and

(b) The total dollar volume (principal loan amounts) of the closed Washington residential mortgage loans **secured by Washington real estate**.

When must I provide the mortgage broker annual report to the department?

You must provide the completed report to the department by May 1st of each year.

What period of time must the mortgage broker annual report cover?

The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.

What action will the department take if I fail to file my mortgage broker annual report by May 1st of each year?

(1) When the report is over thirty days late, the department may begin an enforcement action against you.

(2) When your license is due for renewal, the department may not renew it if you have not filed your annual report.

How do I notify the department when I want to change information on my mortgage broker or loan originator license?

You must file a license amendment application with the department, in a form prescribed by the department, before the change occurs. A fee may apply, see Section P, Department Fees and Costs for fee(s).

As a designated broker or loan originator, must I notify the department if I change my residential address or telephone number?

Yes. Whether your license is active or inactive, you must notify the department in a form prescribed by the department within five business days of a change in your residential address and telephone number.

As a designated broker or loan originator must I notify the department if I change my name?

Yes. Whether your licensee is active or inactive, you must notify the department in a form prescribed by the department within five business days of a name change.

Must I notify the department of the physical address of my mortgage broker books and records?

Yes. You must provide the physical address of your mortgage broker books and records in your initial license application. If the location of your books and records changes, you must provide the department, in a form prescribed by the department, with the new physical address within five business days of the change.

Must I notify the department if my designated broker leaves, or is no longer my designated broker?

Yes. You must notify the department, in a form prescribed by the department, within five days of the loss of or change of status of your designated broker.

When and how do I change the information about my registered agent?

Within five business days of the change you must file a statement of change with the department, in a form prescribed by the department.

If I am a registered agent under this chapter, must I notify the department if I resign?

Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

Must I notify the department if I change the business structure of my company?

Yes. If the company ownership has not changed, you must file a mortgage broker amendment, in a form prescribed by the director, to notify the department of the new business structure.

If the change creates additional company owners, then the new owners must provide the department with fingerprint cards, a credit report, and other personal information in a form prescribed by the director.

What are my responsibilities when I sell my business?

(1) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale, in a form prescribed by the director.

(2) As directed by the department, you must surrender your license and complete the year's annual report.

(3) You must give written notice to borrowers, and to anyone who has applied for a loan, advising them of the change in ownership.

(4) You must give written notice to third party service providers advising them of the change in ownership and bringing accounts payable current. [CF071406: needs more discussion]

(5) You must maintain your records as required under the act and these rules.

(6) You must reconcile the trust account and return any funds to the borrowers, or others to whom they belong. If excess funds still remain and are unclaimed, follow the procedures provided by the Department of Revenue's Unclaimed Property Division. [CF071406: needs more discussion]

Must I notify the department if I cease doing business in this state?

You must notify the department within twenty days after you cease doing business in the state by filing a Mortgage Broker Closure Form. You must also provide the final mortgage broker annual report.

What must I do if my licensed mortgage broker company files for bankruptcy?

(1) Chapter 7 bankruptcy. If your licensed mortgage broker company files for a Chapter 7 bankruptcy, you must:

(a) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(b) Provide the department with a mortgage broker annual report for the one year period preceding the filing within ten days of filing the bankruptcy.

(2) Chapter 11 bankruptcy. If your licensed mortgage broker company files for a Chapter 11 bankruptcy, you must notify the director within ten days.

(3) Chapter 13 bankruptcy. If your licensed mortgage broker company files for a Chapter 13 bankruptcy, you must:

(a) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(b) Provide the department with a mortgage broker annual report for the one year period preceding the filing within ten days of filing the bankruptcy.

If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?

A designated broker must notify the department in writing within ten days of filing for bankruptcy protection.

If I am a designated broker and file for personal bankruptcy, what action may the department take?

The director may require the licensed mortgage broker to replace you with another designated broker.

If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?

A licensed loan originator must notify the director in writing within ten days of filing for bankruptcy protection.

If I am a loan originator and file for personal bankruptcy, what action may the department take?

The director may revoke or condition your license.

When may I reapply for a license after having one revoked or surrendering one due to my personal bankruptcy filing?

You may apply for a license three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

Who in the mortgage broker company must notify the department if they are convicted of a crime?

Principals, designated brokers, and loan originators, whether on active or inactive license status must notify the department in writing within ten days of being:

(1) convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(2) convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?

Principals, designated brokers, and loan originators whether holding active or inactive licenses, must notify the department in writing within ten days of the occurrence if:

(1) charged with any violations by an administrative authority in any jurisdiction; or if

(2) the subject of any administrative action in any jurisdiction.

I. TRUST ACCOUNTING

What are trust funds?

All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are deemed to be trust funds and are considered to be held in trust immediately upon receipt. Trust funds include, but are not limited to, borrower deposits for appraisal fees, credit report fees, title report

fees, and similar fees to be paid for services rendered by third-party providers in the borrower's loan transaction.

Are lock-in agreement fees paid by a borrower to the mortgage broker considered trust funds?

Yes, these fees are considered trust funds and must be deposited in the mortgage broker's trust account, unless the check is made payable to the lender. If the check is made payable to the lender, the mortgage broker has a duty to exercise ordinary [CC072406:I think "ordinary" is unnecessary and forces another definition] care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the lender pursuant to any agreement with the lender, or within thirty days.

Am I required to have a trust account if I receive funds from borrowers for the payment of third-party providers?

Yes. All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are trust funds and are held in trust immediately upon receipt. You must deposit those funds in a trust account in your name as it appears on your license, or if exempt in the name of the exempt broker, in a federally insured financial institution's branch located in this State. The funds must remain on deposit until disbursed to the third party provider except as permitted by the act and these rules. The mortgage broker is responsible for depositing, holding, disbursing, accounting for and otherwise safeguarding the funds in accordance with the act and these rules.

Am I required to have a trust account if I do not receive any trust funds?

No. If you do not accept trust funds at any point before, during, or after a loan transaction, a trust account is not required.

Am I required to have a trust account if I am a mortgage broker exempt from licensing under the act?

Mortgage brokers exempt under RCW 19.146.020(1)(a), (b), (c), (d), (f), (h) are not required to have a trust account even if they receive trust funds. Mortgage brokers exempt under RCW 19.146.020(1)(e) and (g), and RCW 19.146.020(4) may be required to have a trust fund and comply with RCW 19.146.050 and these rules.

What does it mean to receive trust funds "on behalf of borrowers"?

Trust funds are identified by purpose rather than source. Funds received by the mortgage broker from the borrower for the payment of third-party provider services are trust funds. Funds received from relatives of borrowers, the seller in a real estate transaction, or an escrow company or lender reimbursing a mortgage broker for payments advanced are trust funds. Funds deposited to a borrower's subaccount by the mortgage broker are funds received on behalf of the borrower and are trust funds.

What forms of payment must trust funds take?

Trust funds may be in any form that allows deposit into the trust account, including, but not limited to, cash, check, credit card advance, debit transfer, ACH authorization, or any electronic transmission of funds such as bank wires. ~~However, a check made payable to a third party, including a lender for lock agreement fees, is not considered trust funds.~~

May I deposit funds other than trust funds into my trust account?

You may deposit your own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of your own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the act and these rules.

May a loan originator accept trust funds?

A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers.

May a mortgage broker or loan originator accept and hold a check from a borrower that is made payable to a third party and

intended to be used to pay for third-party provider services without depositing the check into a trust account?

Yes. The check must be payable to a specific third-party provider. The payee line may not be left blank. The mortgage broker or loan originator has a duty to exercise ordinary [CC072406:I think "ordinary" is unnecessary and forces another definition] care to see that the check is not used for any unauthorized purpose. The mortgage broker or loan originator must deliver the check to the third-party provider within the time frames and requirements established in RCW 19.146.0201(12). There must also be a written understanding between the borrower and the mortgage broker or loan originator specifying whether the check will be forwarded to the third-party provider or returned to the borrower.

Is a lender or mortgage broker, or agent or employee of a lender or mortgage broker considered a third-party?

No, except that a lender, to the extent it provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan is considered a third-party for this limited purpose.

If a mortgage broker receives funds from a third-party, such as a closer, or a lender, as reimbursement for advancements for the payment of third-party services, are these funds considered trust funds?

Yes, all funds received by the mortgage broker on behalf of the borrower for the payment of third-party services are considered trust funds.

What books and records must I keep regarding my trust account?

You must maintain as part of your books and records:

(1) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(2) A record of all invoices for payments made on behalf of a borrower including but not limited to payments for appraisals, credit reports, title cancellations, and verification of deposit.

(3) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check, check number, amount of check, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(4) A trust account check register consisting of a record of all deposits to and disbursements from the trust account;

(5) Reconciled trust account bank statements;

(6) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s). The reconciled balance of the trust account(s) must at all times equal the sum of: (a) The outstanding amount of funds received from or on behalf of borrowers for payment of third-party providers; and (b) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with WAC 208-660-XXX; and

(7) A printed and dated source document file to support any changes to existing accounting records.

Any alternative records you propose for use must be approved in advance by the director.

What is a "subaccount?"

A "subaccount" is a recordkeeping segregation of each borrower's funds held in the mortgage broker's single deposit trust account that holds the aggregated funds for the mortgage broker's clients. Alternatively, the mortgage broker may establish a separate bank account for each borrower. When added together, individual subaccounts must exactly equal the total of funds held in trust.

May I transfer funds between a borrower's subaccounts?

If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker must maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

When must I deposit trust funds?

You must deposit all funds you receive, that are required to be held in trust, before the end of the third business day following your receipt of the funds.

How must I document deposits?

(1) You must document all deposits to the trust account(s) by having a bank deposit slip which has been validated by bank imprint, or an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker indicating that the funds were actually deposited into the proper account(s).

(2) You must post the receipt of funds by wire transfer or any means other than cash, check, or money order in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the financial institution or transferring entity. You must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the financial institution or transferring entity.

May I be reimbursed for funds that I have advanced into the trust account?

(1) If you deposit your own funds into the trust account as provided in WAC 208-660-XXX, you may receive reimbursement for such deposit at closing into your general business bank account provided:

(a) All third-party provider's charges associated with your deposit have been paid;

(b) The HUD 1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;

(c) The HUD 1 Settlement Statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advances," and the amount reimbursed; and

(d) Any funds disbursed by escrow at closing to you for payment of unpaid third-party providers' expenses charged or to be charged to you are deposited into the borrower's subaccount of the trust account.

(2) If you deposit your own funds into the trust account as provided in WAC 208-660-XXX, and the loan does not close, the funds remain the property of the borrower.

How must I handle trust account disbursements?

(1) All disbursements of trust funds must be made by check, drawn on the trust account, and identified on the check as pertaining to a specific third-party provider transaction or borrower refund, except as specified in this section. The number of each check, amount, date, and payee must be shown in the trust account(s) check ledger as written on the check.

(2) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

What are the requirements concerning the checks I write from my trust account?

You must use checks that are pre-numbered by the supplier (printer) unless you use an automated check writing system which numbers all checks in sequence. All trust account checks must have the words "trust account" on the front. If you use an automated program that writes checks, the check number must appear in the magnetic coding which also identifies the account number for readability by financial institution computers and the program may assign suffixes or subaccount codes before or after the check number for identification.

What disbursements are prohibited?

(1) Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any other account; and

(e) For the payment of fees owed to the broker under RCW [19.146.070](#) (2)(a).

When may a mortgage broker transfer excess funds from a borrower subaccount?

(1) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account in full or partial payment of fees owed to the mortgage broker upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full, and that the borrower has received credit in the loan closing documents for all funds deposited in the trust account.

(2) Each mortgage broker must maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account, including documentation in the form of a final HUD-1 Settlement Statement form showing that credit has been received by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn on the trust account and deposited directly into the mortgage broker's general business bank account.

What if there are funds remaining in a borrower's subaccount after all third-party providers have been satisfied?

Any remaining funds in a borrower's subaccount must be returned to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

What if the mortgage broker cannot locate a borrower in order to remit excess funds in the borrower's subaccount?

Any trust funds held by the mortgage broker for a borrower who cannot be located must be remitted in compliance with the Uniform Unclaimed Property Act of 1983, chapter [63.29](#) RCW.

Is a mortgage broker responsible for all disbursements out of its trust account?

Yes. A mortgage broker is responsible for all disbursements from the trust account whether disbursed by personal signature, signature plate, signature of another person authorized to act on its behalf, or any authorized electronic transfer.

If the mortgage broker receives a check from closing that includes both its fee and a payment or payments for third party service providers, how does it lawfully handle the funds?

The mortgage broker may either:

(1) Split the check at the teller window at the time of deposit and route any moneys due to third party service providers to an approved trust account, and moneys due it to its general account; or

(2) Deposit the entire check into the trust account. After paying any and all moneys due to third party service providers and insuring that the borrower has received credit for all funds deposited in the trust account, the mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account. This amount must be equal to the fee disclosed on the final HUD-1 Settlement Statement, less any amounts already received by the mortgage broker, and must be duly recorded in the trust subaccount ledger. The mortgage broker may not transfer moneys from the trust account to its general business bank account before the loan is closed.

How do I pay a third party appraisal cost if escrow disburses the funds to me and I don't have a trust account?

You must return the funds to escrow for proper disbursement, or maintain a trust account for such incidental occurrences.
[CC052506- Chuck might add another question or two to clarify this]

Is the mortgage broker allowed to transfer funds out of its trust account for any reason other than for payment to a third-party provider?

The mortgage broker may transfer the borrower's funds out of the trust account by check back to the borrower or to any party so instructed in writing by the borrower. A mortgage broker, when complying with these rules may transfer excess trust funds to itself, however, failure to comply with these rules is a serious violation punishable by imprisonment, other penalties, or both as authorized by the act.

How does a mortgage broker disburse funds from a subaccount when there is more than one borrower due to receive those funds?

When disbursing funds back to the borrowers a mortgage broker must make the trust account disbursement check payable to all borrowers with the term "and" written between each borrower's name. When disbursing funds to another party instructed by the borrowers, all borrowers must sign the written notice of instruction.

May mortgage brokers using an interest bearing trust account keep the interest?

No. Mortgage brokers using an interest bearing account must refund or credit to the borrower the interest earned on the borrower's subaccount. The refund or credit to the borrower may be made either at closing or upon withdrawal or denial of the borrower's loan application.

Are there any separate requirements for a computerized accounting system?

Yes. The requirements are as follows:

(1) Your computer system must provide the capability to back-up data files;

(2) (a) You must print the following documents at least once per month and retain them as part of your books and records:

- Trust account deposit register
- Trust account check register
- Trial balance ledger

(b) You must print each subaccount at closure and retain the closure document as part of your books and records;

(3) You must ensure that all written checks are included within your computer accounting system; and

(4) You must print your computer generated reconciliations of the trust account, as described in WAC 208-660-XXX, at least once each month and retain the printouts as a part of your books and records.

Are there penalties for violating trust account requirements under RCW 19.146.050?

A violation of this section is a Class C felony and may be punishable by imprisonment. In addition, a mortgage broker or other person violating this section may be subject to penalties as enumerated under RCW 19.146.220.

J. OUT-OF-STATE MORTGAGE BROKERS AND LOAN ORIGINATORS

May I be a licensed mortgage broker in Washington without a physical office in Washington?

Yes. You are not required by the act to have a physical location in Washington.

May I be a licensed mortgage broker in Washington and have branch offices both in Washington and outside of Washington?

Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

May my mortgage broker business be conducted entirely on the internet?

Yes. But you must have a license for all locations including those that offer loans by mail or internet.

May I work as a loan originator in Washington if I do not have a physical location in Washington?

Yes. You may originate Washington loans from any location licensed under the act, inside or outside of Washington.

May I work as a licensed loan originator for a mortgage broker that is out of the state?

Yes, as long as the location from which you work is licensed under the act.

If my mortgage broker business is not located in Washington, where must I keep my records?

If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, the examiner(s) time spent traveling, transportation, meals, and lodging.

What additional requirements must I comply with if my business does not have a physical location in Washington?

You must continuously maintain a registered agent in Washington and provide the department with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

How do I change the information about my registered agent?

You must file a statement of change with the department within five business days from the change. The statement of change must contain:

- (1) Your name and license number.
- (2) If the agent's office location has changed, the new physical address.
- (3) If the registered agent has changed, the name and physical address of the new registered agent. The director will send a request directly to the new agent to obtain written consent to the appointment.

If I am a registered agent under this chapter, what must I do to resign as registered agent?

(1) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of your resignation.

(2) Provide a copy of the statement of resignation to the licensed mortgage broker.

(3) The department will terminate your appointment on the thirty-first day after the date on which the statement of resignation was delivered.

Where must the director initiate lawsuits arising under the act against out-of-state licensees?

Lawsuits initiated by the director under the act must be initiated in the superior court of Thurston county.

K. DISCLOSURE REQUIREMENTS

When I advertise, or present a business card to a potential borrower, must I make the disclosures required in RCW 19.146.030?

No. You are not required to make disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

Is a mortgage broker that table funds a loan exempt from disclosures?

No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

If a mortgage broker enters into a lock-in agreement with the borrower what disclosures are required?

The lock-in agreement, which must be in writing, must disclose the cost, terms, duration, and conditions of the lock-in agreement, whether the lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender. If the mortgage broker uses and completes the form prescribed by the Department for lock-in agreements, it is

presumed that the disclosure meets the statutory requirements under RCW 19.146.030(2)(c).

What must I disclose to the borrower if they do not choose to enter into a lock-in agreement?

If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

Will a lock-in agreement always guarantee the interest rate and terms?

No. A lock-in agreement may or may not be guaranteed by the mortgage broker or lender. The lock-in agreement must clearly state whether the lock-in agreement is guaranteed by the mortgage broker or lender.

Must a mortgage broker enter into a lock-in agreement with a borrower?

No. The statute does not require a mortgage broker to enter into a lock-in agreement with a borrower.

L. ADVERTISING

See Appendix __

M. RECORD-KEEPING REQUIREMENTS

N. PROHIBITED PRACTICES

O. DIRECTOR AND DEPARTMENT POWERS

1. Examination Authority

Why is the department authorized to examine my business?

The department is authorized to examine your business to determine your compliance with the act.

When may the department examine my business?

The department may examine your business if you have obtained a mortgage broker main or branch office license within the last five years.

How many times may the department examine my business in a five year period?

Your business may be examined once during the first five years of licensing. This applies to the main office and each branch office. However, if violations are found during an examination, the department may conduct additional examinations to follow-up with the correction of these violations. The time frame of any additional examination will depend, in part, on the department's assessment of the continuing risk associated with the violations found during the previous examination.

Will the department give me advance notice of an examination?

(1) The department will **normally** give you advance notice of at least thirty days of a routine examination to allow you to compile the requested documents and prepare for the examiner's arrival. **However, you and the department may agree on an earlier date for the examination.** Extensions of time beyond that are at the director's discretion.

(2) The department will not give you advance notice for "for cause" examinations. "For cause" means the department may have reason to believe you have violated this chapter.

What is the process for an examination of my business?

The examination process is detailed in the department's Mortgage Broker Examination Manual. The manual is available on the department's web site.

The basic process includes, but is not limited to:

(1) **Advance notice.** You will receive a department notice listing the documents the department will examine at your business. Your preparation before the arrival of the department examiners will help the examination proceed more efficiently. The department will make every effort to minimize the impact of the examination on your business.

(2) **A pre-examination meeting at your business.** The department examiner(s) will meet with you upon arrival at your business location.

(3) **The on-site review at your business.** The department examiner will conduct the examination of your business.

(4) **An exit meeting before the examiner(s) leave.** The department examiner(s) will meet with you to discuss the preliminary examination findings.

(5) **A possible resolution of examination findings.** You may have an opportunity to resolve the examination findings.

(6) **A possible referral to enforcement.** Your company may be referred for an enforcement action if you fail to resolve the findings, or if the violation(s) involves fraud, dishonesty, or systematic violations that present harm to the public. An enforcement action may result in a suspension or revocation of your license, the payment of monetary penalties, or a ban from the mortgage broker industry.

What is the scope of the examination of my business?

In general, the scope of the examination will include, but is not limited to:

(1) Reviewing trust accounting compliance.

(2) Reviewing loan files.

(3) Conducting interviews to better understand the business, solicitation practices, transactional events, disclosure compliance, and complaint resolution.

(4) Reviewing the business books and records, including employee records.

When would the Department expand the scope of an examination of my business?

If during an examination the department finds a clear need to expand the scope of the examination, it may do so. Two examples of a clear need to expand the scope of an examination are:

(1) When the department finds an apparent violation of trust accounting.

(2) When apparent violations of the prohibited practices section of the act are discovered. See RCW 19.146.0201 for prohibited practices.

These examples are illustrative only and do not limit the circumstances under which the department may decide to expand the scope of an examination.

Will I get notice if the department wants to expand the scope of the examination of my business?

Yes. The department will provide you with five days written notice if examination findings clearly identify the need to expand the scope of the examination. See WAC 208-660-XXX for examples of when the department may decide to expand the examination.

The expanded examination may include a different location and may go beyond the initial five year time limit.

Will I have to pay for an examination of my business?

(1) If your company is located in Washington, you do not have to pay for the costs of the examination.

(2) If your company is located outside of Washington, you will have to pay for the examiner's travel costs. Travel costs include, but are not limited to, transportation costs, meals, and lodging. Travel costs are determined by the State of Washington, Office of Financial Management.

If the department hires professionals, specialists, or both to examine your business, they will be considered examiners for the purpose of billing you for out-of-state travel costs.

The department will send you an invoice and you will have thirty days to reimburse the department for the examination travel costs. See WAC 208-660-XXX, Department Fees and Costs.

What business books and records must I keep to comply with the act?

The following books and records for your business must be available to the department.

(1) Mortgage Transaction Documents.

(a) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(b) the initial rate sheet;

(c) the last rate sheet if there was a change in rates, terms, or conditions prior to settlement;

(d) all written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures are: the good faith estimate, truth in lending disclosures, equal credit opportunity act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(e) documents and records of compensation paid to employees and independent contractors;

(f) an accounting of all funds received in connection with loans, including a trust account statement with supporting data;

(g) rate lock agreements and the supporting rate sheets;

(h) settlement statements (the final HUD 1 or HUD 1-A);

(i) broker loan document requests (may also be known as loan document request or demand statements) that include any pre-payment penalties, terms, fees, rates, yield spread premium, loan type and terms

(j) records of any fees refunded to applicants for loans that did not close; and

(k) all mortgage broker contracts with lenders and all other correspondence with the lenders.

(2) **Advertisements.** All advertisements placed by or at the request of the mortgage broker that mention rates or fees, and the corresponding rate sheets for the advertised rates. The copies must include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile, or computer network. The record of each advertisement must include the date or dates of publication, the name of the publisher if advertised by newsprint, radio, television or telephone information line, or

in the case of a flyer, the dates, methods and areas of distribution.

(3) **Trust Accounting Records.** See Section I, Trust Accounting.

(4) **Other.** All other books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation. Examples include, but are not limited to, personnel files, company policy and procedure documents, training manuals, records evidencing compliance with applicable federal laws and regulations, and complaint correspondence and supporting documents. See also the department's Mortgage Broker Examination Manual, available on the department web site.

How long must I keep my books and records to comply with the act?

(1) You must keep the books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation for a minimum of twenty-five months.

(2) It may be a prudent business practice to keep your books and records longer than twenty-five months. For example, if a consumer's loan becomes an adjustable rate mortgage after a two year fixed mortgage rate term, the consumer may become unhappy that the terms of their mortgage have changed and file a complaint against your company. The department must begin an investigation into the complaint. If you do not have the records to show proof of proper disclosures and all other compliance with state and federal laws, the department may rely on the consumer's records, which may not be sufficient to exonerate your conduct.

Where must I keep my business records?

(1) You must keep all books and records in a location that is on file with and readily available to the department during normal business hours. The location must have the work space and resources that are conducive to business operations. A readily available location may include places of business, personal residences, computers, safes, or vaults. See WAC 208-660-XXX for the reporting requirements if the address changes.

(2) If your usual business location is outside of Washington, you may either maintain the books and records at a readily available location in Washington, or pay the

department's expenses to travel to the location to examine the books and records stored out-of-state. Travel costs may include, but are not limited to, transportation costs, meals, and lodging.

May I keep my books and records electronically?

Yes. You may keep the required records described in WAC 208-660-XXX by electronic display equipment if you can meet all of the following requirements:

(1) the equipment must be made available to the department for the purposes of an examination or investigation;

(2) the records must be stored exclusively in a non-rewriteable and non-erasable format;

(3) The hardware or software needed to display the records must be maintained during the required retention period under WAC 208-660-XXX.

If the department requests the books and records in hard copy, you must provide it that form.

May the department use reports from professionals or specialists, or both, instead of conducting their own examination of a mortgage broker business?

Yes. Instead of examining a mortgage broker's business, the department may consider the reports of independent certified professionals who have examined the mortgage broker using the same standards used by the department (see the standards in the department's Mortgage Broker Examination Manual). The examiner may then prepare a report of examination that incorporates all or part of the independent reports, or the examiner may expand the scope of the examination.

If I want the department to consider the report of a professional instead of examining my business, how must I make that request, and who submits the professional's report to the department?

When you receive notice from the department that your business is scheduled for an examination, you must notify the department that you wish the department to consider the report of a professional or specialist instead of the department examining your business. The professional or specialist must then submit

their report directly to the department, in a form acceptable to the department.

How may the department determine if the certified professional's report meets the standards of examination established by the department?

The department will compare the sufficiency of the report submitted by the certified professional to the requirements in the department's examination manual. If the professional's report is missing any of the requirements from the manual, the department may require the licensee to provide the missing information.

If the professional's report is missing information, how may the department obtain the missing information?

The department may interview, obtain records from, or otherwise contact the licensee, or with the licensee's permission contact the certificate professional, if additional information is required for the department's review of the professional's report.

What may the department do if the professional's report is not sufficient?

If the department determines the professional's report is not sufficient, the department will notify the licensee and schedule an examination of the business.

What may the department do if the professional's report is sufficient?

If the department determines the professional's report is sufficient, the department will prepare a report of examination that incorporates all or part of the professional's report.

May the department hire professionals or specialists to examine a licensee?

Yes. The department, at its own expense, may retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to examine a licensee.

See WAC 208-660-XXX for the cost of an out-of-state examination.

Do I receive any reports from the examination?

Yes. (1) When you have provided all the requested information, and the examiner has completed the preliminary analysis, the examiner will issue an Exit Report of Examination containing preliminary examination findings.

(2) After additional department review, including the consideration of new information, if any, the department will issue a Final Report of Examination.

Must I do anything as a result of the examination?

Yes. You will receive instructions from the department on the actions you must take. For example, if adverse findings or deficiencies were cited in the Report of Examination, you must respond to those findings.

How do I respond to findings in a Report of Examination?

You must respond in writing within thirty days of the date the department issues the Report of Examination. Your response must address any deficiencies noted in the report and describe the corrective actions you have taken.

What will happen if I do not respond to the Report of Examination?

If you fail to respond to the Report of Examination, you may be referred to enforcement where further administrative actions may be taken against you.

DISCLOSURE QUESTIONS

Must I quote the annual percentage rate when discussing rates with a borrower?

Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., part 226.26 provides guidance using the annual percentage rate in oral disclosures.

Under what circumstances must I redisclose the initial disclosures required under the act?

Generally, any loan conditions or terms that change must be redisclosed to the borrower. Some examples are:

(1) Adjustable rate loan terms including, index, margin, and any changes to the fixed period.

(2) The initial fixed period.

(3) Any balloon payment requirements.

(4) Interest only options and any changes to the options.

(5) Lien position of the loan.

(6) Terms and the number of months or years for amortization purposes.

(7) Changes in the condition of the property subject of the loan.

(8) Changes to the borrower(s) subject of the loan.

(9) Any other condition or term that may be specific to a certain loan product.

(10) Pre-payment penalty terms and conditions.

[CF071106: This Q&A is still under review by the examinations sub-panel]

Must I provide the written disclosures required under the act, by RESPA, and TILA if all I do is pull a credit report on a consumer who has identified a specific property for a purchase and sales agreement or contract, or a refinance loan?

Yes. At that point, you have collected enough information on behalf of the consumer for you to anticipate a credit decision under RESPA's Regulation X, 24 C.F.R. Sections 3500 et seq. and you must provide the consumer with all required disclosures. See the definition of "Application" in these rules.

How do I disclose my mortgage broker fees?

Your fees are shown on lines 808 through 811 of the good faith estimate.

May I charge a loan origination fee or discount points?

No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

PROHIBITED PRACTICES QUESTIONS

May I suggest property values to an appraiser, prior to the appraisal, without that suggestion constituting improperly influencing the appraiser?

[CF072506:placeholder question]

How may I discuss property values with an appraiser, prior to the appraisal, without that discussion constituting improperly influencing the appraiser?

[CF072506:placeholder question]

What business practices are prohibited?

The following business practices are prohibited. See Appendix ___ for examples of each.

- (1) Defrauding or misleading borrowers or lenders.
- (2) Engaging in any unfair or deceptive practices.
- (3) Obtaining property by fraud or misrepresentation.
- (4) Earning a fee or commission through best efforts when a loan is not obtained for a borrower.
- (5) Soliciting, advertising, or entering into a contract for financing terms when those terms are not available at that time.
- (6) Failing to make disclosures as required by state and federal laws.
- (7) Making false or deceptive statements about financing terms or engaging in bait and switch advertising.
- (8) Negligently making false statements or knowingly and willfully making omissions of material fact in connection with reports filed with the department, or in connection with any department investigation.

(9) Influencing an appraiser by:

(a) making a payment, directly or indirectly; or

(b) withholding or threatening to withhold any payment.

(10) Advertising a rate of interest without conspicuously disclosing the annual percentage rate implied by the rate of interest.

(11) Failing to comply with the federal statutes and regulations in WAC 208-660-XXX (definition 22).

(12) Failing to pay third-party providers with the applicable time lines.

(13) Collecting or charging any fees prohibited by the act.

(14) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a transaction where a real estate broker or salesperson is acting under the same licensed real estate broker and not providing the proper disclosures, or acting as a licensed real estate broker or salesperson and mortgage broker and not keeping the business records separate.

(15) Failing to comply with the act and these rules.

Must I display my loan originator's license at the location where I am registered?

No. Neither you nor the mortgage broker company is required to display the license. However, it must be made available for review upon request.

When must I disclose my loan originator license number to the borrower?

There is no requirement that you voluntarily disclose your license number to the borrower. However, in the following situations you must disclose your license number and the name and license number of the mortgage broker you are working with:

(1) When asked by any party to a loan transaction, including third party service providers;

(2) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(3) When asked by any person that has contacted you about a residential mortgage loan;

(4) When taking an application pursuant to WAC 208-660-XXX.
RCW 19.146.030(1)

2. Investigation Authority

3. Enforcement Authority

Is a mortgage broker responsible for the payment of third-party services even if the borrower has agreed to pay the fee?

Yes. If a mortgage broker or loan originator orders the third-party service, then the mortgage broker is responsible for paying for the service.

The borrower is responsible for paying the fee only if the third-party service provider agrees in writing to accept the fee from the borrower.

When must third-party services be paid?

Third-party service providers must be paid no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner, unless:

(a) the third-party service provider agrees in writing to a different payment arrangement, or

(b) the third-party provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third party service.

What is a "bona fide" dispute between a mortgage broker and third-party provider?

A dispute related to the performance or quality of the third-party service that has been reported in writing to the department and third-party service provider. The report must specify the disputed areas of performance or quality.

When must a dispute regarding the performance or quality of a third-party service be reported?

The report of a dispute regarding the performance or quality of the third party service must be made in writing and provided to the department and third-party service provider before the payment for the services becomes due; that is, no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner.

Are there any criminal penalties related to violations of the act?

Yes. Violations of RCW 19.146.050 are class C felonies with a maximum penalty of five years in prison and a fine of ten thousand dollars. Violations of RCW 19.146.235 are class B felonies with a maximum penalty of ten years in prison and a fine of twenty thousand dollars. All other violations of the act are misdemeanors with a maximum penalty of ninety days in jail and a fine of one thousand dollars.

Why, then, does RCW 19.146.110 say the only felony violation of the act is RCW 19.146.050 and all the rest are misdemeanors?

The felony penalty for a violation of RCW 19.146.235(9)(a) is a new addition to the act to address specific conduct. RCW 19.146.110 was not amended to include the new felony violation under RCW 19.146.235 due to an oversight.

Why doesn't RCW 19.146.110 have priority over RCW 19.146.235 and result in misdemeanor penalties for violations of RCW 19.146.235?

RCW 19.146.235 is a "specific" statute. RCW 19.146.110 is a "general" statute. A specific statute will supersede a general statute when both apply.

4. General Authority

P. DEPARTMENT FEES AND COSTS

Mortgage Broker Licenses

Mortgage Broker - license application fee		\$370.00
Mortgage Broker - annual assessment (renewal fee, per location)		\$530.00

Mortgage Broker late renewal assessment (50% of annual assessment)		\$265.00
Mortgage Broker branch office - license application fee		\$185.00
Mortgage Broker branch office - annual assessment (renewal fee, per location)		\$530.00
Mortgage Broker - amendment		No fee

Loan Originator Licenses

Loan Originator - license application fee		\$125.00
Loan Originator - annual assessment (renewal fee, per license)		\$125.00
Loan Originator late renewal assessment (50% of annual assessment)		\$62.50
Loan Originator - additional licenses (associations with additional mortgage brokers)		\$75.00
Loan Originator - annual assessment (renewal fee of additional licenses)		\$75.00
Loan Originator - cancel association with any mortgage broker		No fee
Loan Originator - amendment		No fee

Other Fees

Examinations

(1) In Washington. The department does not charge a licensee with a company located in Washington for the costs of an examination.

(2) Outside of Washington. The department will charge the licensee for travel costs.

(2) If the department hires professionals, specialists, or both to examine an out-of-state licensee, the professional, specialist, or both will be considered examiners for the purpose of billing the licensee for travel costs.

Investigations

(1) The department will charge **seventy dollars [CF070706: Must we stay with the FGF?]** per hour for an examiner's time devoted to an investigation.

(2) The department will bill the licensee for the costs of services from attorneys, accountants, or other professionals or specialists retained by the director to aid in the investigation.

Travel Costs

If the mortgage business is out-of-state, the department will charge the business the travel costs associated with an examination or investigation. Travel costs include, but are not limited to, transportation costs (airfare, rental cars), meals, and lodging.

How is the annual assessment calculated?

The assessment is a flat rate per license.

How does the department use license application fees?

The fees collected by the department are used to pay the costs of administering the act.

When may the director waive any fees due the department?

The director may waive any or all of the fees and assessments imposed under these rules, in whole or in part, on making the following determination:

(1) The consumer services program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent, or

(3) The licensee provides written evidence that such fee causes a hardship in emergency situations.

Q. ADMINISTRATION AND FACILITATION OF CONTINUING EDUCATION

Who may offer continuing education courses to principals, designated mortgage brokers, and loan originators?

Continuing education may be offered by:

(1) course providers with courses of education approved by the director, or

(2) course providers with courses of education approved by professional organizations approved by the director.

What does it mean to offer and administer a course of education?

Offering and administering a course of education is the creation of a curriculum and the ~~administrative functions associated with the department's review and authorization criteria set forth in~~ administrative processes to operate and maintain the curriculum. See the department's approval standards in WAC 208-660-XXX.

What is a "course of education" under the act?

A course of education is formal training that satisfies all or part of the continuing education requirements of the act and these rules.

~~What is a "course provider"?~~

~~A course provider is a person or organization authorized by the director to conduct a course of education.~~ [CF070506: the director does not approve course providers, only individual courses and professional organizations]

What is a "course provider" under the act?

A course provider is a person or organization that provides continuing education. Course providers may provide education that meets the requirements of the act and these rules by applying for and receiving approval from the department.

What is a "professional organization" under the act?

A professional organization is an organization with at least ten members created for the primary purpose of furthering the professional interests of its members, protecting the public interest, or both. Education must be an essential element of the professional organization's purpose. A professional organization must have the director's approval to offer and administer courses of education.

If I am a course provider not affiliated with a professional organization, how do I obtain approval for my courses of education?

You must apply to the department for course approval. If the department approves the course, you will be issued a certificate

of approval that will be effective for two years from the date of issuance.

What standard is required and what will the department review when considering approval of continuing education provided by course providers not affiliated with professional organizations?

Continuing education courses must provide the course taker with a working knowledge of, and competency in, the subject matter. To ensure this standard, the department will review the following when considering approval of education courses:

- (1) The instructor's experience and qualifications,
- (2) Whether the instructor, or course of education proposed, has been approved, denied, or rescinded by the department in the past, and
- (3) The course materials and lesson plans for the proposed courses.

~~If I am a course provider approved by a professional organization approved by the director, but wish to also teach courses unaffiliated with the professional organization, how do I obtain approval?~~

~~For each course unaffiliated with the approved professional organization you must apply through an application process with the department. The department shall review the applications filed and determine whether to approve or deny the prepared course. If the department approves the course, we shall issue a certificate of approval that will be effective for two years from the date of issuance.~~

If I am a course provider with courses of education approved by a professional organization, may I also offer courses of education unaffiliated with the professional organization?

Yes. However, your courses of education unaffiliated with the professional organization must be approved by the department.

~~Can the department remove a course provider from providing continuing education under the Act and rules?~~

May the department rescind approval of a course provider's course of education?

Yes. The department may rescind approval of a course of education upon a determination that the course of education does not meet the standards in WAC 208-660-XXX.

What action must a course provider take if notified by the department that its course of education has been rescinded?

The course provider must immediately:

- (1) Cease advertising or soliciting for the course of education;
- (2) Inform registered course takers of the department's rescission of course approval, and cancel the course of education; and
- (3) Refund any fees paid by course takers for the course.

May a course provider appeal the department's decision to deny or rescind course approval?

Yes. A course provider may appeal the department's decision to deny or rescind a course. The course provider must appeal the decision to the department within twenty days of being notified by the department of the decision.

If a course provider has appealed the department's denial or rescission of a course of education, must it still take the immediate action in WAC 208-660-XXX?

Yes. A course provider appealing a department decision about a course of education must comply with WAC 208-660-XXX.

What standards will the department review when considering approving professional organizations to offer and administer courses of education under the act and rules?

The department will review the following:

- (1) A description of the course of education curriculum that satisfies the content of continuing education under WAC 208-660-XXX and 208-660-XXX;
- (2) Whether the professional organization has sufficient procedures and guidelines to:

- (a) establish a course(s) of education and approve a course provider(s);
 - (b) audit and evaluate an approved course(s) of education and course provider(s);
 - (c) remove courses and providers from the professional organization's curriculum;
 - (d) provide board reconsideration of denial or removal of a course of education or a course provider;
 - (e) ascertain the identity of course of education takers;
 - (f) issue **certificates of satisfactory completion**, that include, at a minimum, the course taker's name, the course provider's name, the course title, and the date of course completion;
 - (g) collect, hold, disburse and refund course of education fees;
- (3) Whether the professional organization requires members to adhere to an established code of conduct or ethics.

Is the department liable for a professional organization's decision to approve, deny, or revoke authorization for a course provider to offer courses of education?

No. The department is not liable for a professional organization's decision to approve, deny, or revoke a course provider's authorization to provide courses of education for the professional organization.

Is the department liable for a course provider's contractual relationship with a professional organization?

No. Course providers independently contract with professional organizations and the department is not liable for **the consequences of** that relationship.

May the department remove a professional organization's authorization to offer and administer courses of education?

Yes. The department may rescind a professional organization's authorization upon a determination that the professional organization fails to meet WAC 208-660-XXX.

What action must a professional organization take if notified by the department that its authorization has been rescinded?

The professional organization must immediately:

- (1) Cease advertising or soliciting for the course of education;
- (2) Inform registered course takers of the department's rescission of course approval, and cancel the course of education; and
- (3) Refund any fees paid by course takers for the course.

May a professional organization appeal the department's decision to deny or rescind authorization?

Yes. A professional organization may appeal the department's decision to deny or rescind the professional organization's authorization to approve course providers. The professional organization must appeal the decision to the department within twenty days of being notified by the department of the decision.

If a professional organization has appealed the department's denial or rescission of authorization must it still take the immediate action in WAC 208-660-XXX?

Yes. A professional organization appealing a department decision about a course provider or course of education must comply with WAC 208-660-XXX.

~~What must a course provider or a professional organization do if a planned class is not taught?~~

~~The course provider or the professional organization must refund all fees to the individuals who paid to take the class.~~

What topics must be included as continuing education courses?

Continuing education courses must include some or all of the topics listed below. Courses may be designed to cover a range of topics or they may focus in detail on a single topic.

General

Ethics in the mortgage industry

Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization

Washington Law and Associated Regulations

The Mortgage Broker Practices Act

The Consumer Protection Act

The Escrow Agent Registration Act

The Usury Act

Unfair practices with Respect to Real Estate Transactions (RCW 49.60.222)

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW

Washington principal and agent law

Federal Law and Associated Regulations

The Real Estate Settlement Procedures Act

Truth in Lending Act

Equal Credit Opportunity Act

Fair Credit Reporting Act

Fair Housing Act

Home Mortgage Disclosure Act

Community Reinvestment Act

Gramm-Leach Bliley Act

Home Ownership Protection Act

Bank Secrecy Act

How long does department approval of continuing education courses last, and may the approval be renewed?

Approval as a continuing education provider is valid for two years. Approval may be renewed by applying to the director forty-five days prior to expiration of a current approval and providing detailed information about the course(s) and instructor(s) if they are to be changed.

May the department audit or review a course of education?

Yes. The department may audit or review any continuing education course by registering for the course or attending the

course of education unannounced by presenting the course provider with official identification prior to the start of the course. The department will not be charged any fee for official audit or review of the course of education.

R. DEPARTMENT GUIDANCE AND TECHNICAL ASSISTANCE

S. MORTGAGE BROKER COMMISSION

What is the role of the Mortgage Broker Commission (Commission)?

The Commission acts in an advisory capacity to the director on mortgage broker issues. The Commission advises the director on the characteristics and needs of the mortgage broker profession.

Who serves on the Commission?

(1) The director appoints the seven members of the Commission for two-year terms. No Commission member will be appointed who has less than five years experience in the business of residential mortgage lending. When appointing a commission member, the director will consider the recommendations from professional organizations that represent mortgage brokers and loan originators.

(2) Of the seven voting members of the Commission, at least three members of the Commission must be licensed mortgage brokers, at least two must be licensed loan originators, and at least one must be a mortgage broker who is exempt from licensure under RCW 19.146.020(1).

(3) The director or a designee serves as an ex officio, nonvoting member of the Commission.

How do interested parties apply for a position on the Mortgage Commission?

In November of each year the department sends a notification to all mortgage brokers to advise them that the director is accepting applications for appointment to the Commission. The director will accept applications in the form of a cover letter and resume until December 15th. The director will select the number of applicants needed to fill the vacancies by January 31st so the appointee(s) can attend the February meeting of the Commission.

T. FORMS

PROPOSED APPENDICES

A

What topics may be covered in the designated broker and loan originator test?

The designated broker test will require candidates to demonstrate a working knowledge of and competency in the following subjects and any others the director deems appropriate:

- (1) Ethics in the mortgage industry
- (2) Washington law and supporting rules:
 - Mortgage Broker Practices Act (chapter 19.146 RCW, chapter 208-660 WAC)
 - Consumer Protection Act (chapter 19.86 RCW)
 - Escrow Agent Registration Act (chapter 18.44 RCW, chapter 208-680 WAC)
 - Usury Act (chapter 19.52 RCW)
 - Unfair Practices with Respect to Real Estate Transactions (RCW 49.60.222, WAC XXX-XXX-XXX)
 - Fair Credit Reporting Act (chapter 19.182 RCW, chapter XXX-XXX WAC)
 - Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW
 - Washington principal and agent law
 - Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW
 - Washington Consumer Loan Act (chapter 31.04 RCW, chapter 208-620 WAC)
- (3) Federal laws and supporting regulations:
 - Real Estate Settlement Procedures Act (12 U.S.C. Sec. 2601 et seq., Regulation X, 24 C.F.R. Part 3500 et seq.)
 - Truth In Lending Act (15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.)

- Equal Credit Opportunity Act (15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202)
- Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq., Regulation V, 12 C.F.R. Part 222)
- Fair Housing Act (XX U.S.C. XXXX, XX C.F.R. XXX)
- Home Mortgage Disclosure Act (12 U.S.C. Sec. 2801, 12 C.F.R. Part 203)
- Community Reinvestment Act (XX U.S.C. XXXX, XX C.F.R. XXXX)
- Gramm-Leach-Bliley Act (15 U.S.C. Sec. 6801-6809, 16 C.F.R. Parts 313-314)
- US Patriot Act (XX U.S.C. XXXX, XX C.F.R. XXXX)
- Home Ownership Protection Act (15 U.S.C. Sec. 1637 and 1647)
- Bank Secrecy Act (XX U.S.C. XXXX, XX C.F.R. XXXX)
- Consumer Protection Act (XX U.S.C. XXXX, XX C.F.R. XXXX)
- Private Mortgage Insurance Disclosure

(4) Arithmetical computations common to mortgage lending including but not limited to:

- APR
- Finance charge
- Amount financed
- Payment & amortization
- Debt to income ratio
- Loan to value ratio

(4) Property Types

(5) Program Types and disclosures

(6) Occupancy Classes

(7) Documentation Types:

- Full document
- Stated income documented assets
- Stated income stated assets
- No ratio
- No documentation
- Bank statement income

(9) Ethics in the mortgage industry

(10) General mortgage industry information:

- state and federally required disclosures
- credit evaluation
- proper use of the federal forms (GFE, TIL, 1003, HUD1, consumer booklets, etc)
- settlement services and processes

(11) Trust account and recordkeeping requirements provided in the act and these rules.

B

Examples of Prohibited Practices Violations

RCW 19.146.0201(1): Employed a scheme, device, or artifice to defraud or mislead.

Example 1: A loan originator discovers that a borrower does not have sufficient income to qualify for a loan ~~that yields a significant loan origination fee.~~ The loan originator falsifies the borrower's income on the loan application and provides the lender with the loan originator's own telephone number as the number to confirm the borrower's income. The loan originator subsequently confirms the falsified income for the borrower and the loan is approved.

Example 2: A borrower applied for a residential mortgage loan to avoid foreclosure. The mortgage broker or loan originator is unable to qualify the borrower for a loan, but offers to purchase the residence or find a buyer who will purchase the property for what is owed on the property, with an agreement to resell the property to the borrower once the borrower becomes eligible for a loan. The borrower sells the property to the mortgage broker or loan originator but the mortgage broker or loan originator subsequently either refuses to sell the house back to the borrower, or asks for a price that is significantly above the purchase price.

RCW 19.146.0201(2): Engage in any unfair or deceptive practice toward any person.

Example 1: A borrower complains that the mortgage broker's fees are too high. To keep the borrower as a client, the loan originator promises the borrower a refund of some of the origination fee after the loan closes. The loan originator fails to do so, however.

Example 2: The mortgage broker assures the borrower that the broker's job is to find the borrower the best loan possible. The mortgage broker accepts the borrower's application and subsequently presents the borrower with a loan product that includes a market-competitive interest rate and a substantial yield spread premium (YSP). The mortgage broker does not tell the borrower, however, that the interest rate would be lower if the mortgage broker were to accept a smaller YSP.

RCW 19.146.0201(3): Obtain property by fraud or misrepresentation.

Example 1: A borrower responds to a newspaper advertisement by calling a mortgage broker's toll free number to apply for a second mortgage. The broker accepts an application from the borrower and subsequently notifies the borrower by telephone that the loan has been approved. The mortgage broker tells the borrower that before the loan may fund, the borrower must wire a fee to the broker. The borrower wires the fee, but never hears from the broker again.

Example 2: A borrower applied for a residential mortgage loan to avoid foreclosure. The mortgage broker or loan originator is unable to qualify the borrower for a loan, but offers to purchase the residence or find a buyer who will purchase the property for what is owed on the property, with an agreement to resell the property to the borrower once the borrower becomes eligible for a loan. The borrower sells the property to the mortgage broker or loan originator but the mortgage broker or loan originator subsequently either refuses to sell the house back to the borrower, or asks for a price that is significantly above the purchase price.

RCW 19.146.0201(4): Solicit or enter into a contract with the borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

Example 1: As part of a loan transaction, the broker or loan originator asks the borrower to sign a document containing language similar to the following:

In the event the loan is canceled by either borrower(s), or declined by BROKER, the undersigned understand and agree to pay for the actual amount of the billing for costs incurred, including but not limited to, appraisal, title report cancellation fee, credit report, document preparation, loan processing and other normal costs expended upon behalf of the borrower(s). Borrower(s) agree to reimburse BROKER for any costs in excess of the deposit upon billing. Should any dispute arise from this agreement, the prevailing party shall be entitled to reasonable attorney's fees.

Example 2: As part of a loan transaction, the mortgage broker or loan originator asks the borrower to sign a document containing language similar to the following:

Should you decide to cancel your loan, which you have the right to do at any time before your loan funds, a \$350 processing fee and a \$250 administration fee will be charged if you cancel:

- (a) After we have packaged and submitted your loan to one of our lenders
- (b) After you have received written notification that your loan has been approved

RCW 19.146.0201(5). Solicit, advertise, or enter into a contract for specific interest rates, points, or other advertising terms unless the rates are actually available.

Example 1: A mortgage broker provided accurate 30/15 year fixed rate and annual percentage rate (APR) information to the local newspaper for its weekly mortgage market section. The mortgage broker permitted the same figures to be used for the next week's advertisement without confirming that those rates were still available. A borrower applied for those rates during the second week of the advertisement and was informed that the rate was no longer available.

Example 2: A borrower completed and signed an application for a residential mortgage loan seeking 100% financing. On that same date, the borrower received and signed a good faith estimate

(GFE), truth in lending disclosure (TIL), and lock-in agreement. The lock-in agreement guaranteed an interest rate of 5.875%, and contained no expiration date. On the day of closing, the borrower was given a second GFE that disclosed an interest rate of 6.125%. The mortgage broker stated that the loan the borrower locked under did not allow for 100% financing.

RCW 19.146.0201(6): Failed to make disclosures as required by RCW 19.146.030 and any other applicable state and federal law.

Example 1: A borrower applied for a loan over the internet on a Thursday afternoon and the borrower's credit report was pulled the next day. A loan originator for the mortgage broker was able to reach the borrower by telephone the following Monday and made an appointment to meet at the borrower's residence the following Wednesday. At that time the loan originator provided copies of the disclosures required by RCW 19.146.030, contrary to the three-day time limit imposed by State and Federal law.

Example 2: A borrower applied for a loan and later claimed that no written disclosures were given. The loan originator was certain the disclosures required by RCW 19.146.030 had been provided, but a review of the loan file revealed only a complete set of disclosures that were unsigned and undated. The loan originator had not documented when the disclosures were provided, and the mortgage broker did not maintain a system for documenting when disclosures were provided. Consequently, the mortgage broker was unable to meet its burden to establish that the required written disclosures had been timely provided.

RCW 19.146.0201(7): Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising.

Example 1: The mortgage broker enters into a rate lock agreement with a borrower for a thirty year fixed rate mortgage at a very competitive rate. At closing, the rate is the same, but the loan is an adjustable rate mortgage (ARM). The broker tells the borrower that this is the best deal the broker could get and if the borrower does not sign, the borrower will lose the loan. The broker tells the borrower the broker will refinance the mortgage for the borrower after the two year prepayment penalty has passed. The borrower is concerned that if the loan is lost, they will not be able to close on the purchase of their house and will lose their earnest money. The borrower signs the ARM rider and goes through with the loan.

Example 2: A mortgage broker buys an advertisement in the local newspaper advertising a loan product that the broker knows very few borrowers qualify for. The broker does not mention the limited availability in the advertisement. When a borrower comes in to apply for the advertised rate and does not qualify, the broker processes the application as if the borrower were qualified. When the loan is rejected by the lender, the broker then offers a loan product the borrower is qualified for that yields a greater profit for the broker.

RCW 19.146.0201(8): Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

Example 1: The department sends a mortgage broker a directive to provide specific loan documents in connection with investigating a complaint. The broker provides various documents accompanied by a letter stating that the broker has complied with the directive. Later, the broker finds additional documents for the subject loan that had not been provided in response to the directive. The broker's claim of compliance would be considered a negligently false statement if the broker had been unaware of the existence of the newly discovered documents, and a knowing and willful false statement if the broker had been aware of the existence of the documents.

RCW 19.146.0201(9): Make any payment, directly or indirectly, to an appraiser of a property, for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property.

Example 1: A mortgage broker makes a direct payment of cash to appraiser or a member of the appraiser's family, in addition to the appraisal fee, to persuade the appraiser to come back with a higher value than the appraiser is inclined to on their own.

Example 2: A mortgage broker takes an appraiser out to a lavish dinner, sporting event, or night club to persuade the appraiser to come back with a higher value than the appraiser is inclined to on their own.

Example 3: A mortgage broker offers to assist the appraiser or a member of the appraiser's family in obtaining a mortgage loan at no cost to persuade the appraiser to come back with a higher value than the appraiser is inclined to on their own.

RCW 19.146.0201(10): Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest.

Example 1: A mortgage broker sends direct mail solicitations to Washington state residents that emphasize a specific low interest rate in large type. The annual percentage rate (APR), however, is only shown at the bottom of the advertisement in fine print.

Example 2: A mortgage broker's radio advertisement emphasizes a specific low rate and the resulting low monthly payments, but there is no mention of the terms "APR" or "annual percentage rate."

RCW 19.146.0201(11): Fail to comply with any requirement in the truth-in-lending act ... and Regulation Z; ... the real estate settlement procedures act ... and Regulation X ...[as well as other federal laws ...].

Example 1: A mortgage broker mailed solicitations advertising a particular low monthly payment amount. The ad, however, failed to disclose "the amount or percentage of the down payment," "the terms of repayment," and "the annual percentage rate, using that term, and, if the rate may be increased after consummation, that fact" as required by the requirements of the Truth in Lending Act and Regulation Z.

Example 2: A mortgage broker tells the borrower that the loan for which they are applying does not have a prepayment penalty. When preparing the TIL, however, the mortgage broker does not complete the check boxes at the lower section of the Truth in Lending form or otherwise give any written disclosure of whether or not there is a prepayment penalty contrary to the provisions of Regulation Z.

Example 3: A Statement of Credit Denial, Termination, or Change provided to a borrower when a loan was withdrawn did not include the name of the federal regulatory agency that is responsible for regulating the lender, which is a requirement of the Equal Credit Opportunity Act.

RCW 19.146.0201(12): Fail to pay third party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party services, whichever comes first, unless otherwise agreed or

unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service.

In each of these examples, the mortgage broker is responsible to pay:

Example 1: The mortgage broker orders an appraisal and the service is performed, but the result of the appraisal is too low to complete the loan so the broker refuses to pay.

Example 2: The mortgage broker orders an appraisal and agrees with the borrower that the borrower will pay for the appraisal at the time it is done. The appraiser completes the appraisal, but the borrower does not pay for it.

Example 3: The mortgage broker orders an appraisal and the service is performed, but there are several bona fide mistakes made by the appraiser. The mortgage broker calls the appraiser on the telephone and disputes the quality of the appraisal, but never provides the appraiser written notice of the dispute.

RCW 19.146.0201(13): Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or RCW 19.146.070.

Example 1: A mortgage broker discloses on the GFE an origination fee of one point. At closing, the HUD 1 states an origination fee of two points, but the increase was not disclosed in writing at least three days prior to closing.

Example 2: A Mortgage broker charges and collects a fee of \$750, which represents the anticipated cost of the loan processing, at the time the borrower applies for the loan.

Example 3: A loan originator asks a borrower for \$450 to pay for an appraisal, claiming to have paid for these services out of pocket.

Example 4: A loan originator collects a cash fee in advance to "expedite" the processing of a loan application.

RCW 19.146.0201(14). Cannot act as a real estate broker and loan originator on same transaction without special disclosure including specific language in the act. Must keep real estate records separate and apart from mortgage broker records.

Example 1: A licensed real estate broker is also a licensed mortgage broker and keeps separate and distinct offices for each. The real estate broker finds a buyer for a residence and refers the buyer to a loan originator at the real estate broker's mortgage broker company. Neither the broker nor the loan originator give the buyer the notice required by RCW 19.146.0201(14)(b).

Example 2: A licensed real estate broker or salesperson who is also a mortgage broker conducts both businesses out of the same office. The broker, however, fails to conduct these businesses separately or maintain the records of these businesses separate and apart from each other, and has neglected to obtain a determination by the director that separation of the two businesses would create an undue financial hardship and would be unnecessary for the protection of the public.